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सं. 31] नई दिल्ली, अगस्त 5—अगस्त 11, 2018, शनिवार/श्रावण 14—श्रावण 20, 1940
No. 31] NEW DELHI, AUGUST 5—AUGUST 11, 2018, SATURDAY/SRAVANA 14—SRAVANA 20, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1167.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उपधारा (1) के खंड (ड.) के उपखंड (i) के अनुसरण में, केन्द्रीय सरकार, एतद्वारा, सुश्री रीता ए. तेवतिया के स्थान पर वाणिज्य विभाग में सचिव, श्री अनूप वधावन (आईएएस - यूके: 1985) को तत्काल प्रभाव से, अगले आदेशों तक भारतीय निर्यात-आयात बैंक (एक्विजिशन बैंक) के निदेशक मण्डल में निदेशक के पद पर नामित करती है।

[फा.सं. 9/16/2012-आईएफ-1]

सौम्यजित घोष, अवर सचिव

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 8th August, 2018

S.O. 1167.—In pursuance of Sub-clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Sh. Anup Wadhawan (IAS – UK : 1985), Secretary, Department of Commerce as Director on the Board of Director of Export Import Bank of India (EXIM Bank) vice Ms. Rita A. Teatota with immediate effect until further orders.

[F. No. 9/16/2012-IF-I]

SOUMYAJIT GHOSH, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय**(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 28 जुलाई, 2018

का.आ. 1168.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा 1 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्य सरकार, गृह (पुलिस) विभाग की अधिसूचना संख्या —8 सी.बी.आई.—80—10/2018—6537/गृ0आ0 संख्या दिनांक 26 जुलाई 2018 महिला (मुजफ्फरपुर) थाना कांड संख्या 33/2018 दिनांक 31/05/2018 धारा 120(बी)/376/34 भा. द. वि. एवं 4/6/8/10/12 पोक्सो एक्ट, जो साहु रोड, मुजफ्फरपुर स्थित बालिका गृह में आवासित बालिकाओं के साथ मानसिक, शारिरिक एवं यौन शोषण से संबंधित प्रकरण एवं प्रयत्न, दुस्प्रेरण और षड्यंत्र तथा उसी संव्यवहार के अनुक्रम में किये गये अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार संपूर्ण बिहार राज्य पर करती है।

[फा. सं. 228/34/2018—एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 28th July, 2018

S.O. 1168.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Bihar, Home (Police) Department, vide Notification No. 8/C.B.I 80-10/2018-6537/HP dated 26 July, 2018 hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar to investigate/supervise and inquire into the Mahila (Muzaffarpur) P.S. Case No. 33/2018 dated 31.05.2018, u/s 120(B), 376, 34 IPC and 4/6/8/10/12 POCSO Act related to mental, physical and sexual exploitation of girl children residing at Children Home situated at Sahu Road, Muzaffarpur and any other offence/offences committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/34/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1169.—केन्द्रीय सरकार दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री दिव्य ज्योति दास और टूटूमणि देव गोस्वामी, अधिवक्ताओं को आसाम बम ब्लास्ट मामले के संबंध में और विशेष न्यायालय, कामरूप (एम) गोवाहाटी के समक्ष सेशन मामला, 2011 का संख्यांक 59(के) रूप में रजिस्ट्रकृत, दिल्ली विशेष पुलिस स्थापन (सीबीआई) द्वारा संस्थित मामला संख्यांक आरसीडीएसटी2008एस2003 से 0011 में अभियोजन और उक्त सेशन मामले में उत्पन्न अपील, पुनरीक्षण और कार्यवाहियों का दिल्ली विशेष पुलिस स्थापन (सीबीआई) की ओर से संचालन करने के लिए नियुक्ति की तारीख से तीन वर्ष की अवधि या मामले के निपटान, जो भी पहले हो, विशेष लोक अभियोजकों के रूप में नियुक्त करती है।

[फा. सं. 225/08/2018—एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1169.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Dibyajyoti Das and Shri Tutumoni Deva Goswami, Advocates as Special Public Prosecutors for conducting prosecution of case Number RC/DST/2008/S/2003 to 0011, instituted by the Delhi Special Police Establishment (CBI), pertaining to the Assam Bomb Blast case and registered as session case Number 59(K) of 2011, before the Special Court, Kamrup (M), Guwahati, Assam, and appeals, revisions or other proceeding arising out of the said session case, on behalf of the Delhi Special Police Establishment (CBI), for a period of three years from the date of appointment or disposal of the case, whichever is earlier.

[F. No. 225/08/2018-AVD-II]

S. P. R. TRIPATHI, Under Secy.

मानव संसाधन विकास मंत्रालय**(उच्चतर शिक्षा विभाग)****(राजभाषा प्रभाग)**

नई दिल्ली, 31 जुलाई, 2018

का.आ. 1170.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत निम्नलिखित कार्यालयों को, ऐसे कार्यालयों के रूप में, जिनके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

1.	केंद्रीय विद्यालय बूंदी, गेट नं. 3 नैनवा रोड, बूंदी (राजस्थान)
2.	केंद्रीय विद्यालय क्रमांक 7 जयपुर, के.औ.सु.ब. 61, कुंडा रोड, जयपुर- 302028
3.	केंद्रीय विद्यालय हनुमानगढ़ (जंक्शन) – 335001
4.	केंद्रीय विद्यालय आई.आई.टी. जोधपुर एन.एस.- 65 नागौर रोड करवड़ आईआईटी कैम्पस जोधपुर – 342037 (राजस्थान)
5.	केंद्रीय विद्यालय सीयूराज, बांदर सिंदरी राष्ट्रीय राजमार्ग- 8 तहसील किशनगढ़, जिला अजमेर, राजस्थान – 305817
6.	केंद्रीय विद्यालय नागौर, द्वारा - राजकीय बालिका उच्च प्राथमिक विद्यालय, ग्राम पंचायत भवन के पास, ताउसर रोड, नागौर – 341001 (राजस्थान)
7.	केंद्रीय विद्यालय जैसिन्धर, गाँव - जैसिन्धर स्टेशन, तहसील- गडरा रोड, जिला- बाड़मेर
8.	केंद्रीय विद्यालय जालोर, शिवाजी नगर, जालोर – 343001 (राजस्थान)
9.	केंद्रीय विद्यालय दौसा, लालसोट रोड, दौसा - 303303 (राजस्थान)
10.	केंद्रीय विद्यालय संगठन, क्षेत्रीय कार्यालय, रायपुर, (केंद्रीय विद्यालय नं. 02 परिसर, सैक्टर-IV) पंडित दीनदयाल उपाध्याय नगर, रायपुर (छत्तीसगढ़) - 492010

11.	केंद्रीय विद्यालय पांढुर्णा, म्युनिसिपल बोर्डिंग भवन, पांढुर्णा जिला- छिंदवाड़ा, मध्य प्रदेश - 480334
12.	केंद्रीय विद्यालय अमरकंटक, इ.गाँ.रा.ज.वि.वि. परिसर, लालपुर, अमरकंटक, मध्य प्रदेश - 484886
13.	नवोदय विद्यालय समिति, क्षेत्रीय कार्यालय, चंडीगढ़ - 160032
14.	जवाहर नवोदय विद्यालय, अलीगढ़, उत्तर प्रदेश - 202141
15.	जवाहर नवोदय विद्यालय, अंबेडकर नगर, उत्तर प्रदेश - 224235
16.	जवाहर नवोदय विद्यालय, बलिया, उत्तर प्रदेश - 221701
17.	जवाहर नवोदय विद्यालय, बलरामपुर, उत्तर प्रदेश - 271201
18.	जवाहर नवोदय विद्यालय, बांदा, उत्तर प्रदेश - 210001
19.	जवाहर नवोदय विद्यालय, गाजियाबाद, उत्तर प्रदेश - 245304
20.	जवाहर नवोदय विद्यालय, लखनऊ, उत्तर प्रदेश - 226008
21.	जवाहर नवोदय विद्यालय, महाराजगंज, उत्तर प्रदेश - 273303
22.	जवाहर नवोदय विद्यालय, मिर्जापुर, उत्तर प्रदेश - 231309
23.	जवाहर नवोदय विद्यालय, पीलीभीत, उत्तर प्रदेश - 262201
24.	जवाहर नवोदय विद्यालय, संत कबीर नगर, उत्तर प्रदेश - 272164
25.	जवाहर नवोदय विद्यालय, बागेश्वर, उत्तराखंड - 263641

[फा.सं.11011-2/2018-रा.भा.ए.]

संजय कुमार सिन्हा, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT**(Department of Higher Education)****(O.L. UNIT)**

New Delhi, the 31st July, 2018

S.O. 1170.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Human Resource Development, (Department of School Education & Literacy) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi:-

1.	Kendriya Vidyalaya Bundi, Gate No. 3 Nainva Road, Bundi (Rajasthan)
2.	Kendriya Vidyalaya No. 7, CISF, 61, Kunda Road, Jaipur - 302028

3.	Kendriya Vidyalaya Hanumangarh (JN) - 335001
4.	Kendriya Vidyalaya IIT Jodhpur, NH-65, Nagaur Road, Karwar IIT Campus Jodhpur – 342037 (Rajasthan)
5.	Kendriya Vidyalaya CURAJ, Bandar Sindri, NH – 8 , Tehsil- Kishangarh Dist. Ajmer, Rajasthan- 305817
6.	Kendriya Vidyalaya Nagaur, C/o Govt.Girls Upper Primary School Near Gram Panchayat Bhawan, Tausar Road, Nagaur – 341001 (Rajasthan)
7.	Kendriya Vidyalaya Jaisindhar, Village - Jaisindhar Station, Tehsil - Gadra Road, Distt- Barmer
8.	Kendriya Vidyalaya Jalore, Shivaji Nagar Jalore – 343001 (Rajasthan)
9.	Kendriya Vidyalaya Dausa, Lalsot Road, Dausa- 303303 (Rajasthan)
10.	Kendriya Vidyalaya Sangathan, Regional Office, Raipur, (Kendriya Vidyalaya No. 2, Campus Sector - IV) Pt. Dindayal Upadhyay Nagar, Raipur (Chhattisgarh) - 492010
11.	Kendriya Vidyalaya Pandhurna, Municipal Boarding Building, Pandhurna, Distt.- Chhindwara Madhya Pradesh - 480334
12.	Kendriya Vidyalaya Amarkantak, IGNTU Campus Lalpur, Amarkantak, Madhya Pradesh - 484886
13.	Navodaya Vidyalaya Samiti, Regional Office, Chandigarh-160032
14.	Jawahar Navodaya Vidyalaya, Aligarh, Uttar Pradesh - 202141
15.	Jawahar Navodaya Vidyalaya, Ambedkar Nagar, Uttar Pradesh - 224235
16.	Jawahar Navodaya Vidyalaya, Ballia, Uttar Pradesh - 221701
17.	Jawahar Navodaya Vidyalaya, Balrampur, Uttar Pradesh - 271201
18.	Jawahar Navodaya Vidyalaya, Banda, Uttar Pradesh - 210001
19.	Jawahar Navodaya Vidyalaya, Ghaziabad, Uttar Pradesh - 245304
20.	Jawahar Navodaya Vidyalaya, Lucknow, Uttar Pradesh – 226008
21.	Jawahar Navodaya Vidyalaya, Maharajganj, Uttar Pradesh - 273303
22.	Jawahar Navodaya Vidyalaya, Mirzapur, Uttar Pradesh - 231309
23.	Jawahar Navodaya Vidyalaya, Pilibhit, Uttar Pradesh - 262201
24.	Jawahar Navodaya Vidyalaya, Sant Kabir Nagar, Uttar Pradesh - 272164
25.	Jawahar Navodaya Vidyalaya, Bageshwar, Uttarakhand - 263641

[F. No. 11011-2/2018-OLA]

SANJAY KUMAR SINHA, Jt. Secy.

खान मंत्रालय

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1171.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, खान मंत्रालय के निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है :-

1. हिंदुस्तान कॉपर लिमिटेड, तलोजा कॉपर प्रोजेक्ट ।

[फा. सं. ई-16031/2/2017-हिंदी]

आलोक चंद्र, आर्थिक सलाहकार

MINISTRY OF MINES

New Delhi, the 2nd August, 2018

S.O. 1171.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office, under the Ministry of Mines, whose more than 80% staff have acquired the working knowledge of Hindi :—

1. Hindustan Copper Limited, Taloja Copper Project

[F. No. E-16031/2/2017- Hindi]

ALOK CHANDRA, Economic Advisor

कोयला मंत्रालय

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1172.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) के अधीन भारत सरकार ने कोयला मंत्रालय द्वारा जारी की गई अधिसूचना संख्यांक का. आ. 2899 (अ), तारीख 7 सितम्बर, 2016, जो भारत के राजपत्र के भाग II, खण्ड 3, उपखण्ड (ii), तारीख 8 सितम्बर, 2016 में प्रकाशित की गई थी, उस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 42.01 हेक्टर (लगभग) या 103.81 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी ;

और केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विहित उक्त भूमि के भाग में कोयला अभिप्राप्य है ;

इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्यांक सी-1(ई) III/जेजे/940-0618, तारीख 7 जून, 2018 का निरीक्षण कलक्टर, जिला चंद्रपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता- 700 001 के कार्यालय में या महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर - 440 001 (महाराष्ट्र) के कार्यालय में किया जा सकता है ।

इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में हितबद्ध व्यक्ति, उस तारीख जिसको राजपत्र में प्रकाशित इस अधिसूचना की प्रतियां जनता को उपलब्ध करा दी जाती है, से तीस दिन के भीतर, संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर किन्हीं अधिकारों के संबंध में सक्षम प्राधिकारी की उक्त अधिनियम की धारा 8 के अधीन लिखित में आक्षेप फाइल कर सकेगा;

और केन्द्रीय सरकार द्वारा कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700 001 को भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii) तारीख 11 जून, 1983 में प्रकाशित का. आ. 2519, तारीख 27 मई, 1983 द्वारा उक्त अधिनियम की, धारा 3 के अधीन सक्षम प्राधिकारी नियुक्त किया गया है ।

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे संलग्न अनुसूची में वर्णित 42.01 हेक्टर (लगभग) या 103.81 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकार का अर्जन करने के अपने आशय की सूचना देती है ।

अनुसूची

साखरी-ईरावती (पौनी - III) विवृत खान भाग - II (शेष क्षेत्र)

बल्लारपुर क्षेत्र

जिला चंद्रपुर (महाराष्ट्र)

[रेखांक संख्या सी-1(ई)III/जेजेजे/940- 0618, तारीख 7 जून, 2018]

सभी अधिकार :

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल (हेक्टर में)			कुल	टिप्पणियां
					अभिधृति	सरकारी	वन		
1	हिरापुर (भाग - I)	3	राजुरा	चंद्रपुर	28.25	-	-	28.25	भाग
2	चिंचोली (खुर्द) (भाग - I)	3	राजुरा	चंद्रपुर	9.05	1.52	-	10.57	भाग
3	चिंचोली (खुर्द) (भाग - II)	3	राजुरा	चंद्रपुर	-	3.19	-	3.19	भाग
कुल :					37.30	4.71	-	42.01	

कुल क्षेत्रफल : 42.01 हेक्टर (लगभग)

या 103.81 एकड़ (लगभग)

भाग - I

ग्राम हिरापुर के अर्जित किए जाने वाले प्लॉट संख्यांक :

18, 19, 20, 21, 33, 40, 41, 42, 47/1- 47/2, 48, 49.

ग्राम चिंचोली (खुर्द) के अर्जित किए जाने वाले प्लॉट संख्यांक :

248, 249, 250, 251, 252, 271, सड़क, नाला ।

भाग - II

ग्राम चिंचोली (खुर्द) के अर्जित किए जाने वाले प्लॉट संख्यांक :

225 (सरकारी) .

सीमा- वर्णन :**भाग - I**

क - ख : रेखा, ग्राम साखरी और ग्राम हिरापुर की सम्मिलित ग्राम पर बिन्दु 'क' से आरंभ होती है और ग्राम हिरापुर से होते हुए बिन्दु 'ख' पर मिलती है ।

- ख – ग : रेखा, ग्राम हिरापुर से होकर गुजरती है, फिर ग्राम हिरापुर और चिंचोली (खुर्द) की सम्मिलित सीमा के साथ-साथ गुजरती है, उसके पश्चात् रेखा ग्राम चिंचोली (खुर्द) से होकर गुजरती है और बिन्दु 'ग' पर मिलती है।
- ग – घ : रेखा, ग्राम चिंचोली (खुर्द) से होकर गुजरती है फिर पौनी नाले को पार करती है बाद में पौनी नाले के किनारे से लगकर जाती है फिर पौनी नाले को पार करती है और नाले के किनारे पर बिन्दु 'घ' पर मिलती है।
- घ – ड. : रेखा, ग्राम चिंचोली (खुर्द) से होकर गुजरती है फिर ग्राम चिंचोली (खुर्द) एवं ग्राम हिरापुर की सम्मिलित सीमा को पार करती है फिर ग्राम हिरापुर से होकर गुजरती है और बिन्दु 'ड.' पर मिलती है।
- ड. – च : रेखा, ग्राम हिरापुर से होकर गुजरती है और ग्राम हिरापुर और साखरी की सम्मिलित सीमा पर बिन्दु 'च' पर मिलती है।
- च – क : रेखा, ग्राम हिरापुर एवं साखरी की सम्मिलित सीमा के साथ-साथ गुजरती है और आरंभिक बिन्दु 'क' पर मिलती है।

भाग – II

सीमा वर्णन

- छ – ज : रेखा, ग्राम चिंचोली (खुर्द) में पौनी नाले के किनारे से बिन्दु 'छ' से आरंभ होती है फिर पौनी नाले के किनारे से जाकर पौनी नाले के किनारे पर बिन्दु 'ज' पर मिलती है।
- ज–झ–छ : रेखा, ग्राम चिंचोली (खुर्द) से होकर गुजरती है फिर बिन्दु 'झ' के पास से लगकर गुजरती हुई पौनी नाले पर आरंभिक बिन्दु 'छ' पर मिलती है।

[फा. सं. 43015/7/2018—एलए एण्ड आईआर]

राम विरोमणि सरोज, अवर सचिव

MINISTRY OF COAL

New Delhi, the 6th August, 2018

S.O. 1172.—Whereas by the notification of the Government of India in the Ministry of Coal number S. O. 2899 (E), dated the 7th September, 2016 issued under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (ii), dated the 8th September, 2016, the Central Government gave notice of its intention to prospect for coal in 42.01 hectares (approximately) or 103.81 acres (approximately) of the land in the locality specified in the schedule annexed to that notification ;

And whereas the Central Government is satisfied that coal is obtainable in a part of the said land described in the schedule appended thereto;

The plan bearing number C-I(E)III/JJJ/940-0618, dated the 7th June, 2018 of the area covered by this notification may be inspected in the office of the Collector, District Chandrapur (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Kolkata - 700 001 or in the office of the General Manager, Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur – 440 001 (Maharashtra).

Any person interested in the land described in the schedule appended to this notification may, within thirty days from the date on which copies of this notification published in the Gazette are made available to the general public, file objection in writing under section 8 of the said Act to the competent authority with regard to the acquisition of the whole or any part of the land or any rights in or over such land.

And whereas the Coal Controller, 1, Council House Street, Kolkata-700 001 has been appointed the competent authority under section 3 of the said Act by the Central Government vide number S. O. 2519, dated the 27th May, 1983, published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 11th June, 1983.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire all rights in or over the land measuring 42.01 hectares (approximately) or 103.81 acres (approximately) described in the Schedule appended hereto.

SCHEDULE

Sakhari-Irawati (Pauni – III) Opencast Mine Part – II (Balance Area)

Ballarpur Area

District Chandrapur (Maharashtra)

[Plan bearing number C-1(E)III/JJJ/940- 0618, dated the 7th June, 2018]**All Rights :**

Sl. No.	Name of Village	Patwari Circle number	Tahsil	District	Area (in hectares)			Total	Remarks
					Tenancy	Govt.	Forest		
1.	Hirapur (Part – I)	3	Rajura	Chandrapur	28.25	-	-	28.25	Part
2.	Chincholi (Khurd) (Part – I)	3	Rajura	Chandrapur	9.05	1.52	-	10.57	Part
3.	Chincholi (Khurd) (Part – II)	3	Rajura	Chandrapur	-	3.19	-	3.19	Part
Total :					37.30	4.71	-	42.01	-

Total area : 42.01 hectares (approximately)

or 103.81 acres (approximately)

Part – I

Plot numbers to be acquired in village Hirapur :

18, 19, 20, 21, 33, 40, 41, 42, 47/1- 47/2, 48, 49.

Plot numbers to be acquired in village Chincholi (Khurd) :

248, 249, 250, 251, 252, 271, Road, Nallah.

Part - II

Plot numbers to be acquired in village Chincholi (Khurd) :

225 (Government).

Boundary description:**Part – I**

A – B : Line starts from Point 'A' on the common village boundary of villages Sakhari and Hirapur, then line passes through village Hirapur and meets at Point 'B'.

B – C : Line passes through village Hirapur, then passes along the common village boundary of villages Hirapur and Chincholi (Khurd). Then line passes through village Chincholi (Khurd) and meets at Point 'C'.

C – D : Line passes through village Chincholi (Khurd) and crosses Pauni Nallah then passes along the bank of Pauni Nallah, again crosses Pauni Nallah and meets at Point 'D'.

- D – E : Line passes through village Chincholi (Khurd), then line crosses the common village boundary of villages Chincholi (Khurd) and Hirapur, then line passes through village Hirapur and meets at Point 'E'.
- E – F : Line passes through village Hirapur and meets at Point 'F' on the common village boundary of villages Hirapur and Sakhari.
- F – A : Line passes along the common village boundary of villages Hirapur and Sakhari and meets at starting Point 'A'.

Part - II

Boundary description :

- G – H : Line starts from Point 'G' on the bank of Pauni Nallah in village Chincholi (Khurd) and passes along the bank of Pauni Nallah and meets at Point 'H'.
- H - I - G : Line passes through village Chincholi (Khurd) and passes nearby Point 'I' and meets at starting Point 'G' on bank of Pauni Nallah.

[F. No. 43015/7/2018- LA&IR]

RAM SHIROMANI SAROJ, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1173.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दैतारी आयरन ओर प्रोजेक्ट ऑफ मैसर्स ओ.एम.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 66/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-29012/3/2002-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 1st August, 2018

S.O. 1173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2002) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Daitari Iron Ore Project of M/s. O.M.C. Ltd. and their workman, which was received by the Central Government on 27.07.2018.

[No. L-29012/3/2002-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 66/2002

Date of Passing Award – 22nd June, 2018

Between:

The Management of the General Manager,
Daitari Iron Ore Project of M/s. OMC Ltd.,
At./Po. Talapada, dist. Keonjhar

...1st Party-Management

(And)

Their Workman, Shri Biranchi Prasad Jena,
Mali, Daitari Iron Ore Project of M/s.OMC
Limited, Keonjhar

...2nd Party-Workman

Appearances :

M/s. B.P. Tripathy, Advocate ... For the 1st Party-Management.

M/s. B.C. Bastia, Advocate ... For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour in exercise its authority conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as "The Act") have referred for an adjudication of a dispute under the Act vide its Letter No. L-29012/3/2002-IR(M), dated 11.07.2002 and the schedule of reference is "Whether the action of the management of Daitari Iron Ore Project of M/s. OMC Ltd., in terminating the service of Shri Biranchi Prasad Jena justified? If not, to what relief the workman is entitled?"

2. Shorn of unnecessary details the case of the disputant workman is that he was engaged by the 1st Party-Management as a gardener on daily wage basis for the period from 28.9.1995 to 31.7.2001 to maintain the garden of the guest house and children park at Daitari. That apart, he was to work in the residential bungalow of the General Manager. In such process of engagement he worked continuously and uninterruptedly for more than 240 days in a calendar year. Though, he used to work daily through-out the month to maintain the garden he was paid wages for less number of days in a month than the actual days of work as wages on Sundays and other public holidays were not paid to him. He was provided with a quarters belonging to the Management. Provident fund and E.S.I. contribution was deducted from his wages and deposited by the Management. It is his claim that having worked for more than five years on daily wage basis when he approached the Management for regularization of his service, the Management refused employment to him with effect from 01.08.2001. Such a refusal of employment amounts to retrenchment. He was not paid notice pay and retrenchment compensation when engagement was refused to him. As his engagement was continuous and uninterrupted for more than 240 days in a twelve calendar months preceding to his disengagement and there was non-compliance of the provisions of Section 25-F of the Act, such refusal of employment/retrenchment is illegal, unjustified and unsustainable in the eye of law. Hence, a dispute was raised before the Asst. Labour Commissioner (Central), which ultimately leads to the present reference.

3. In its written statement the Management has refuted the allegations denying all pleadings of the disputant workman. Per contra it is the stand of the Management that the disputant was engaged as a contingent labour on exigencies and his such engagement was occasional and intermittent. He was never engaged for full month and his employment was not exceeded 240 days continuously in any calendar year during the period of his engagement. Since, his engagement was purely on temporary and on need basis and it was in nature of casual daily labour for a period of much less than 240 days in a year, there was no statutory requirements to comply the provisions of Section 25-F of the Act while refusing engagement to a daily labour like him. It is, further, stand of the Management that when as a matter of principle the work of gardening in the guest house and the children park was out-sourced through contractor, there was no necessity for the Management to engage the disputant on daily wage basis. Since, such gardening in the guest house and the children park is being out-sourced presently, there is also no scope for reinstatement or reengagement of the disputant workman. Hence, prayer has been made for rejection of the claim statement.

4. On the aforesaid pleadings of the parties the following issues have been settled for adjudication of the dispute.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of Daitari Iron Ore Project of M/s. OMC Limited in terminating the service of Shri Biranchi Prasad Jena is justified?
3. If not to what relief the workman is entitled?

5. It is pertinent to mention here that the reference case was disposed of by this Tribunal vide its award dated 29.4.2005 whereby the claim of the disputant workman was rejected on the ground that he had not worked continuously for 240 days preceding to his disengagement. The workman filed a writ petition before the Hon'ble High Court of Orissa vide W.P.(C) No. 9621/2005 challenging the award. The Hon'ble High Court while disposing the writ vide its order

dated 22.3.2017 have set aside the impugned award and remitted back the matter to the Tribunal for its fresh adjudication giving opportunity to the parties to adduce further evidence, if any, in the matter. The observation made by the Hon'ble High Court in the order relevant for the purpose of fresh disposal is as follows:- **“Taking into consideration the submission made by the learned counsel for the parties and on perusal of the impugned award under Annexure-4, it appears that learned CGIT discussing the materials available on record in threadbare disbelieved the contention of the Workman petitioner to the effect that he had complete 240 days in a calendar year preceding his termination. Learned CGIT mainly relied upon the wage register pertaining to Workman-petitioner and came to the conclusion that the Workman-petitioner had not completed 240 days. He has not referred to any document reflecting the attendance of the Workman-Petitioner. In that view of the matter, the impugned award under Annexure-4 is set aside and the matter is remitted back to the learned CGIT for fresh adjudication of the reference, giving opportunity to the parties to adduce further evidence in the matter”.**

6. In order to substantiate its claim the disputant workman has examined himself as W.W.-1 and he has relied upon documents like application dated 18.8.2001 of the workman to the G.M. Daitari Iron Ore Project for re-engagement as Mali, copy of the letter of G.M., Daitari Iron Ore Project dated 16.10.2001 addressed to the A.L.C.(C), Bhubaneswar, copy of the year-wise working statement of the Dy. Manager (L.W.), Daitari Iron Ore Project, copies of E.P.F. slips of the workman for different years, copy of the office order dated 6.6.1997 issued by the G.M. (P & A) OMC Limited and copy of the certificate issued to the workman by Shri B.C. Das, Manager (Admn.) Daitari Iron Ore Mines of M/s. OMC Limited, dated 31.7.1998 marked as Ext.-1 to Ext.-5. He has not adduced any further evidence after remand of the matter. The Management did not adduce any evidence before the Tribunal before remand of the matter by the Hon'ble High Court. But, the Management has examined its Senior Manager, Personnel as M.W.-1 and filed copy of the claim application of the 2nd party dated 16.10.2001, copy of the written statement dated 16.10.2001 filed by the 1st Party-Management before the Asst. Labour Commissioner (Central), Bhubaneswar, copy of the work order/letter dated 8.8.2002 of the 1st Party and copy of the agreement between the 1st Party and the contract agency dated 10.12.2002 which are marked as Ext.-A to Ext.-D after the matter was remitted back to the Tribunal.

7. All the issues are taken up jointly for the purpose of convenience.

It is well settled by the Hon'ble Apex Court in a catena of decisions including in the case of Krishna Bhagya Jala Nigam Ltd., -versus- Mohammed Rafi Civil Appeal No. 2895/2009 that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wage earner, there will be no letter of appointment or termination. There will also no receipt or proof of payment. Thus, in most cases the workman can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. Mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. Keeping in view the above settled position of law if the evidence adduced by the workman is scrutinized it is found that the disputant has not only relied upon his own assertion/self serving statements but he has also relied upon a letter issued by the Management to Asst. Labour Commissioner (Central) Ext.-2, copy of year-wise working statement prepared by the Deputy Manager (LW), Daitari marked as Ext.-2/1 and E.P.F. Accounts slips marked Ext.-3 series. In his oral testimony the disputant has categorically asserted that he joined as a Mali on daily wage basis in the service in Daitary Iron Ore Project of the Management on 28.9.1995 by a verbal order of the General Manager. There is nothing unusual in such statement to disbelieve him since, usually no appointment or written order is issued any organization for engagement of a daily labour. That apart, the Management has not denied the engagement of the disputant on a casual and daily wage basis. It is his specific stand that the workman had not completed 240 days continuous and uninterrupted work in a twelve calendar months preceding to his disengagement. Indisputedly, documents relied upon by the workman were admitted without objection of the Management. Moreover, these documents are the copies of official correspondences of the Management. On a mere reading of Ext.-2 it is found that the Management had admitted before the Asst. Labour Commissioner (Central) that the disputant was paid full and final payment for actual days of his engagement i.e. for the period from 28.09.1995 to 31.07.2001. As per the wage statement prepared by Deputy Manager (LW) Daitary Ext.-2/1 the disputant was found to have worked for 145 days in between January, 2001 to July, 2001 and in between January, 2000 to December, 2000 he worked for 240 days. It emerges from the pleadings and evidence of W.W.-1 that the disputant was not paid wages on the days he was not engaged. As per own assertion of the disputant he was not paid wages on Sundays and other public holidays. This assertion is not specifically denied by the Management either in its pleadings or in its evidence. If Sundays and other public holidays in which the disputant was not paid wages are taken into consideration along with the fact emerging from Ext.-2/1 that the workman had worked for 145 days in between 1st January, to 31st July 2001 and 240 days in between 1st January, to 31st December, 2000, it can be safely held that the workman was in continuous and uninterrupted service of the Management as defined under section 25-B of the Act.

8. Further, it cannot be over-sighted that in case of a labour being engaged intermittently or occasionally on exigencies on daily wage basis there was no need on the part of the employer to deduct or to pay employees provident

fund contribution. Ext.-3 series discloses that the Management was making payment of provident fund contribution for the disputant during the period of his engagement. If the disputant was not engaged casually or on daily wage basis regularly for a continuous period, the Management was not expected to make payment of E.P.F. contribution. For the discussions made above, the evidence adduced by the disputant workman is found sufficient to discharge his burden to prove his continuous engagement of 240 days in a year. That apart, nothing substantial has been elicited from his cross examination to disbelieve his claim that he worked for 240 days continuously in a twelve calendar months preceding to his disengagement. When there is overwhelming evidence to suggest the continuous engagement of the disputant for more than 240 days, the burden shifts to the Management to establish the contrary. But, the Management appears to have failed miserably in this regard as the oral testimony as well as documents led by the Management after remand of the case is no way helpful for the Tribunal to discard the claim of the disputant workman. It cannot be over-sighted that M.W.-1 has categorically admitted that he was not in the service of the Management when the disputant was engaged and disengaged and his testimony is based on official records. If the attendance of the workman was less than 240 days in a year, the Management could have produced the attendance register or wage register or any other connecting paper in regard to engagement and payment of wages to the disputant from which the actual days of engagement in a calendar year could have been ascertained. M.W.-1 has admitted that attendance register of casual workers was maintained earlier. Be that as it may, the Management could have produced the register to prove the disputant wrong. In the above back-drops adverse inference can be drawn against the claim of the Management. Hence, from the discussions made above it can be safely said that the disputant workman was engaged on daily wage basis by the Management and his such engagement on daily wage was more than 240 days continuously in a twelve months calendar year preceding to the refusal of employment to him on 01.8.2001.

9. Admittedly, there is no controversy that the disputant was not paid any notice pay and retrenchment compensation when he was allegedly refused engagement as a daily wager on 01.08.2001. Refusal of employment to the disputant can also be safely inferred from the pleadings of the Management that garden work in the guest house and in the children park has been out-sourced from the year 2002. Therefore, the action of the Management not giving further employment to the disputant after 31.7.2001 would amount to retrenchment as defined under section 2(oo). Such retrenchment was given effective without payment of notice pay and retrenchment compensation and as such, it was in violation of the provisions of Section 25-F. Hence, the said retrenchment of the disputant is not tenable in the eye of law.

10. Coming to the point of relief to which the disputant is entitled, it cannot be over-looked that as per settled principles of the Hon'ble Apex Court reinstatement is not automatic in cases of all illegal retrenchment or removal. Relief of reinstatement with back wages depends upon the facts and circumstances of each case. Compensation in lieu of reinstatement can be awarded depending upon the nature and period of employment held by the workman, facts and circumstances under which the workman was retrenched or removed and availability of the posts/vacancy and several other factors. In the case at hand it is seen that the disputant worked only for six years as a casual daily wager. The disputant was not engaged against any sanctioned and permanent post. He was employed as a contingent labour. In the meanwhile sixteen/seventeen years have already been elapsed from the date of his alleged retrenchment. The gardening work is presently out-sourced by the Management and as such there is little scope for the Management to engage the disputant in such gardening work on daily wage basis. Taking the above factors into consideration I am of the considered view that it is not a fit case where reinstatement with back wages is the appropriate relief. Award of compensation seems to be just and appropriate in the case for illegal and unjustified retrenchment of the disputant workman. Hence, having regard to the length of the period for which the disputant was engaged and other factors the 1st Party-Management is directed to make a payment of Rs. 1,00,000/- (one lakh only) as compensation to the disputant workman for his alleged retrenchment. The amount of compensation is to be paid within two months of the publication of the award failing which the disputant workman is entitled to receive the said compensation with a simple interest of 8% from the date of this order till payment of the compensation.

11. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1174.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 18/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-17012/2/2007-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2007) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 27.07.2018.

[No. L-17012/2/2007-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 18/2007

BETWEEN :

Sri Dilip Kumar Gaur
S/o Sri Prabhu Ram Gaur, Village Johardih,
Post and City, Ambedkarpur
Distt. Ambedkar Nagar (UP)

AND

1. The Branch Manager,
Branch Office, Ambedkar Nagar
Ambedkar Nagar (U.P.)
2. The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, L.I.C. Building, Mall Road,
Kanpur (U.P.)

AWARD

1. By order No. L-17012/2/2007-IR(M) dated 14.05.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Dilip Kumar Gaur S/o Sri Prabhu Ram Gaur, Ambedkarpur and the Branch Manager/Sr.Divisional Manager, LIC, Ambedkarnagar/Kanpur for adjudication.
2. The reference under adjudication is:

“WHETHER THE TERMINATION OF SH. DILIP KUMAR GAUR W.E.F. 8.02.1998 A CONTRACT WORKMAN APPOINTED AS SUBSTAFF/PEON AT THE BRANCH OFFICE OF LIC, AKARPUR, DISTT. AMBEDKAR NAGAR IS JUST AND LEGAL? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?”
3. As per the Claim statement W-5 dated 10.08.2007, the workman while referring to the dispute sent by the Govt. of India to this Tribunal, has stated in brief that he was appointed on the post of Peon initially vide order dated 14.08.1991, by the Branch Manager, after an interview conducted before the Selection Committee, for a fixed period; again after the termination of the period, he was appointed on the same conditions vide order dated 28.09.1991, and he continued on the aforesaid post upto 04.11.1991 and payment was made regularly. The petitioner further stated that he was allowed to continue in service with due wages, w.e.f. 05.11.1991 but no fresh appointment order was passed and when he enquired regarding his status he was told that since his working was good, therefore he had been allowed to continue further without giving any appointment letter.
4. It has been pleaded in the claim statement that the petitioner was informed for being taken into service as per Rules of the LIC and therefore he was treated regular on his own and no further appointment letter was required, due wages were paid to him through the vouchers and apart from doing the duties of the Peon, the

opposite party has also directed to him to do the work of Cash book, receipts and cheques in his own hand writing in the Akbarpur Branch of the LIC, entries on the bank reconciliation statements and receipts etc. were also made by the petitioner, on some occasions. When his wages were reduced, he moved an application and then accordingly payment was made to him. It has been alleged by the workman that he had continuously worked in the Akbarpur branch of LIC from 04.08.1991 to 08.02.1998, without break and he had even worked on Sundays.

5. The petitioner has further stated that in July 1997 theft took place in the branch office, on being asked by the SHO of Police Station the Branch Manager submitted the list dated 17.07.1997 of employees of the LIC branch, wherein his name was placed at sl.no.2, which clearly indicated that he had been working there as daily wager for the past six years continuously. Since the petitioner was apprehensive and anxious of his status, he had regularly asked whether he would be regularized, then he was informed that his case of regularization shall be considered by the LIC as per its Rules. On 05.02.1998 the petitioner sent representation to the opposite party through registered post stating therein that he had regularly worked for the past 7 years and he should be considered for regularization. But when he went to the office as usual on 08.02.1998, he was directed by the Branch Manager, to leave the premises immediately as his services were terminated and despite his request, no written order of termination was given, he sent representation through letter dated 02.03.1998 but did not get any response. It has been alleged by the petitioner that no prior notice was given, neither any compensation was paid; his services were terminated in an arbitrary and unjust manner, violation of Section 25F of the I.D. Act. has also been pleaded in the claim statement. The workman has submitted that he never misbehaved, nor any notice/warning was ever issued to him throughout his entire service at Akbarpur branch of LIC, he has also claimed that LIC is covered under the definition of "Industry" and his case comes within the definition of "workman" as per the provisions of the I.D. Act. The petitioner has emphasized that since his date of oral termination viz. from 08.02.1998 he is unemployed. Moreover new incumbents were recruited by the opposite party management for the same work which was being done by the petitioner but his case was not considered. He has filed Writ Petition 1755 (S/S) of 1998 before Hon'ble High Court, Lucknow Bench, Lucknow which was decided on 18.04.2006 thereby giving direction to him to move an application before the Labour Court. With the aforesaid pleadings request has made by the petitioner seeking directions to the management to get him reinstated with full back wages and consequential benefits. Several documents have been annexed with the claim statement.
6. The management in its written statement M-16, while denying the allegations leveled in the claim statement admitted that the petitioner was initially appointed on the post of Substaff (Peon) on temporary basis for 40 days only vide appointment letter dated 14.08.1991, for a fixed period on contract basis and his services came to an end automatically on the expiry of the fixed period. Opposite party has further submitted that his appointment was extended for further period of 35 days w.e.f. 01.10.1991 and salary was paid for the specific period to which he was appointed, and his services were not continued after 04.11.1991 and no work was taken from him thereafter.
7. The opposite party has pleaded that as per Rules, appointment is made after competitive examination at State level through the written examination and thereafter interview is also conducted of the eligible persons. No examination was ever conducted with regard to the said branch of the LIC and as per the Stop Gap Arrangement on temporary basis, the LIC is empowered to make temporary appointment for particular branch after requisitioning names from the Employment Exchange and holding test of formal nature. The management has asserted that the petitioner had worked as temporary Sub Staff (Peon) w.e.f. 12.08.1991 to 23.09.1991, and from 01.10.1991 to 04.11.1991 for a fixed period of 75 days only and thereafter he automatically stood terminated and did not work as an employee of LIC. The facts mentioned in the claim statement have been misconceived and false, as per the pleading of the management. The representation of the petitioner was decided by the management and he was informed through letter dated 13.04.1998. Since on 08.02.1998 he was not working as an employee of the LIC, no question of his termination arose at all. The opposite party has asserted that the provision of the Constitution of India prevails over the I.D. Act. It has also been emphasized that the judgment of Hon'ble High Court did not mean that the reference is to be made, only an option was made to the petitioner to apply under the I.D. Act. Citations of Hon'ble Supreme Court has also been referred in the written statement.
8. The opposite party has further asserted that continuance in service for more than 240 days in the public corporate body will not apply to this case, and it applies to other private industries, for which law was enacted and since mode of recruitment and appointment is provided in the LIC Rules, the provisions of the I.D. Act. are not attracted at all. With the above mentioned averments request has been made by the management to adjudicate the matter against the petitioner workman. Appointment Rules etc. have been annexed with the written statement.

9. With strong denial of the allegations made in the written statement, rejoinder W-17 dated 21.08.2009 has been filed by the petitioner alongwith annexures reiterating the pleas taken in the claim statement.
10. The petitioner has filed his affidavit W-20, in evidence. He was thoroughly cross examined on behalf of the management.
11. The management filed an affidavit M-23 dated 01.06.2011 of Sri S.K. Gupta, Asstt. Administrative Officer, LIC.
12. During pendency of the case the petitioner has filed an affidavit dated 28.07.2013, mentioning therein the directions of the Hon'ble Supreme Court alongwith an application W-30. Another affidavit W-31 alongwith annexures was also filed by the workman referring therein the order passed by the Hon'ble Supreme Court.
13. Vide order passed by the then Hon'ble Judge/PO dt. 13.11.2013, amendment application moved by the workman was allowed and an opportunity was given to the management to file additional written statement thereafter. On 28.10.2015 the management informed in writing that no additional written statement would be filed. Thereafter the case was fixed for further orders and evidence. Several adjournment applications were moved by the workman, seeking time to file his further evidence. But neither any evidence was filed nor workman/AR thought it proper to appear before this Court on the date fixed. On subsequent dates, further opportunity was provided to the workman but since he refrained himself to adduce any evidence, the management was required to submit its evidence on affidavit. On 05.12.2017 again none appeared on behalf of the workman, the opposite made an endorsement on the Order Sheet that no further evidence would be adduced by the management. Thereafter the case was fixed for arguments. Following his careless and callous attitude, again neither the workman appeared to submit arguments nor any AR on his behalf put his appearance on the date fixed.
14. Under the circumstances mentioned hereinabove, the intellect arguments on behalf of the management/LIC were heard at length. Record was scanned thoroughly.
15. The workman in his cross examination dated 07.04.2011, while replying to a question put up by the management has submitted that on 14.08.1991 he was appointed for 35 days. Further regarding subsequent periods commencing w.e.f. 12.08.1991 and 01.10.1991 he did not answer properly, rather in evasive manner he informed the Court that he had forgotten the relevant period. Again regarding termination of service on 04.11.1991, he has adopted the same tactics. However, he has admitted his request made in the paper no. 7/12, 7/13 and 7/15 wherein prayer was made by him for payment of wages. He has further admitted the fact of theft at the LIC branch office.
16. The witness adduced by the management was not cross-examined on behalf of the workman, although sufficient opportunity was given to him. Further the reference submitted by the workman relating to certain orders/judgments filed by Hon'ble Courts do not support the version taken by the petitioner in the present dispute. It is quite evident from the record that the conduct of the petitioner has been very negligent and careless. For years and months all together the workman did not care to appear before the Court or to move adjournment application.
17. The management has referred the case law 2011 (29) LCD, Rizwanullah Ansaari Vs State of U.P. and others, page 1984, Hon'ble High Court, Allahabad.
18. In Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that the workman could be entitled for the protection of section 25-F of the I.D. Act., 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of Section 25-F of the I.D. Act. 1947. Further, Hon'ble Apex Court has observed as under:

“ The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the I.D. Act. It is now well settled that it is for 240 days in a year preceding his termination.”

The workman has pleaded that his services have been terminated orally w.e.f. 08.02.1998 without complying with the provisions of 25-F of the Act. therefore, the period for scrutiny, in view of the above law, i.e. twelve calendar months preceding the date of his alleged termination, comes out to from 08.02.1997 to 07.02.1998.

19. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the oral

termination order and to prove that the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in the year concerned. The claim has been denied by the management, therefore, it was for the workman to lead evidence to show that he had in fact worked up to 240 days in the year preceding his alleged termination. In Range Forest Officer vs S.T. Hadimani (2002) 3 SCC 25 Hon'ble Apex Court has observed as under:

“It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside.”

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in R.M.Yellatti & Asstt. Executive Engineer 2006 (108) FLR 213 as follow:

“ It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the I.D. Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however made it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management.”

21. There is no other cogent reason on record except the claim statement and evidence of the workman himself which could show that the workman was in employment with the LIC, and he had worked continuously for 240 days in 12 calendar months preceding the date 08.02.98 and his services have been terminated in utter violation to the provision of the I.D. Act.
22. After analyzing the record available before the court, it is inferred that the workman was temporarily in services of the LIC for certain fixed period, and was paid for the same. On the contrary the management has successfully proved the stand taken in the written statement. Moreover it is settled law that mere pleading are no substitute proof. The workman has miserably failed to discharge the burden for establishing the fact of continuous work for 240 days in the year preceding the date of his alleged termination. Hence I come to the conclusion that the so called termination of the workman Sri Dilip Kumar Gaur w.e.f. 08.02.1998 can not be treated as unjust or illegal. The petitioner workman is not entitled to any relief. The reference under consideration is adjudicated accordingly.
23. Award as above.

LUCKNOW

25.06.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 208/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-17012/115/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 208/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 27.07.2018.

[No. L-17012/115/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 25th day of June, 2018

INDUSTRIAL DISPUTE No. 208/2014

Between :

Sri Md. Israth Ali
H.No.3-1-90,
(P.O. & M), Metpally,
Karimnagar Dist.
Karimnagar (A.P.) – 505325

...Petitioner

AND

1. The Zonal Manager,
LIC of India, Zonal Office,
Opp. Secretariat, Saifabad,
Hyderabad – 500 004.
2. Sr. Divl. Manager,
LIC of India, Divl. Office,
Karimnagar,
Karimnagar (A.P.) – 505001.
3. The Branch Manager,
LIC of India, Metpally Branch,
Metpally, Karimnagar Dist.
Karimnagar (A.P.)

...Respondents

Appearances:

For the Petitioner : Party in Person
For the Respondent : Sri B.S.R. Murthy, Advocate

A W A R D

The Government of India, Ministry of Labour by its order No. L- 17012/ 115/ 2014-IR(M) dated 3.9.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

“Whether the action of the management of the Life Insurance Corporation of India, Zonal Office, Hyderabad/Divisional Office, Karimnagar and Branch Office, Metpally, Karimnagar Dist., in terminating the services after crossing 240 days continuous service of Sri Md. Israt Ali, Ex. Temp. Substaff of LIC of India, Metpally Br. w.e.f. 1.2.2013 is justified or not? If not, what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 208/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. But the Petitioner failed to attend this Tribunal which clearly indicates that

perhaps the dispute of the Petitioner has already been settled and the Petitioner has got nothing to raise any claim against the Respondents. Hence, the case of the Petitioner is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 25th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स विकास कन्स्ट्रक्शन एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 28/2012-13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-29012/34/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2012-13) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Vikas Construction and other and their workman, which was received by the Central Government on 27.07.2018.

[No. L-29012/34/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/28/2012-13

Date: 12.06.2018

Party No.1(a) : M/s Vikas Construction,
Contractor, At Post Awarpur,
Tehsil: Korpana, Distt. Chandrapur

Party No.1(b) : The Plant Head,
M/s Ultra Tech Cement Ltd.,
At Post Awarpur, Tehsil: Korpana,
Distt. Chandrapur (M.S.)

Versus

Party No.2 : Shri Uddhav Sitaram Vaidya,
R/o Bibi, Post: Nanda,
Tehsil : Korpana, Distt. Chandrapur (M.S.)

AWARD

(Dated: 12th June, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the Industrial dispute between the employers, in relation to the management of M/s Vikas Construction and Ultra Tech Cement Ltd. and their workman, Shri Uddhav Sitaram Vaidya, for adjudication, as per letter **No.L-29012/34/2012-IR(M) dated 29.11.2012**, with the following schedule:-

"Whether the action of the management of M/s Ultra Tech Cement Limited, Awarpur Cement Works, Distt. Chandrapur through contractor M/s Vikas Construction in terminating the services verbally of Shri Uddhav Sitaram Vaidya w.e.f. 18.07.2011 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, notices were issued to parties to file claim and written statement and accordingly the petitioner filed its statement of claim and affidavit and the Party No. 1, management did not file any written statement.

3. Today i.e. on 12.06.2018, a joint Pursis is filed, in which, they prayed to decide the said reference, as they settled their dispute out of the Court. Party No. 1 is represented by Advocate, M.R. Pillai and Party No. 2 is represented by Advocate, A.A. Madiwale. Party No. 2, workman and M/s Vikas Construction are identified by Advocate S.W. Ambagade. They also filed Xerox copy of the cheque and their identity proof. This appears settlement is legal. Cheque is already given and the consent of the workman has already taken. Parties did not want any further relief through this Tribunal.

So, the Pursis for settlement dated 12.06.2018 is allowed. Hence, it is ordered:-

ORDER

The Pursis for settlement of the case is allowed. The case is treated as withdrawn. The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 11/2017-18) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-30011/5/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2017-18) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Limited and others and their workman, which was received by the Central Government on 27.07.2018.

[No. L-30011/5/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/11/2017-18

Date: 12.06.2018

- | | | |
|----------------------|----------|---|
| Party No.1(a) | : | The Sr. Plant Manager,
M/s Indian Oil Corporation Limited,
Dhanj Bottling Plant, Dhanaj (Khurd),
State Highway No. 199, Tehsil. Karanja (Lad),
Distt. Washim Maharashtra – 444110 |
| Party No.1(b) | : | The Executive Director,
M/s Indian Oil Corporation Limited,
Maharashtra State Office, Indian Oil
Bhawan, Plot No. 33, G-Block, Bandra-
Kurla Complex, Bandra (East),
Mumbai – 400050 |
| Party No.1(c) | : | M/s Vishal Testing & Services, Contractor,
1/623, PGN Apartments, Muttukadu Road,
Kottivakkam, Chennai – 600041 |
| Party No.1(d) | : | M/s Super Handling Co. Labour & Transport
Contractor, 4-C, Gurukripa Shopping Centre, |

Ramkaka Road, Chhani, Vaddodara,
Gujarat – 391740

Versus

Party No. 2 : The Secretary,
Bhartiya Kamgar Sena,
Prafullaban Society,
R.K. Vaidya Road, Dadar (W),
Mumbai – 400028

AWARD

(Dated: 12th June, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of M/s Indian Oil Corporation Limited & 2 contractors and their union, Bhartiya Kamgar Sena, for adjudication, as per letter **No.L-30011/5/2017- (IR(M) dated 05.06.2017**, with the following schedule:-

“Whether the non-employment/termination of employment of Shri Ramdas O. Yadav, Ex-Helper and 18 others (list attached) contract labourers of Indian Oil Corporation Limited, Dhanaj Bottling Plant w.e.f. 13.10.2016 orally during the pendency of the conciliation proceeding and without compliance of section 33, 25-F & 25-H read with section 2(g) of the Industrial Dispute Act, 1947 is legal and justified? If not, to what relief the contract labourers are entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 01.09.2017, Shri Vilas D. Raut, advocate filed vakalatnama on behalf of the management but nobody appeared on behalf of the petitioner. Fresh notice was issued on 03.11.2017 for the date of 29.11.2017. On 07.06.2018, advocate for the management filed a pursis for closing of the reference. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1178.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 09/2017-18) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-30011/3/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2017-18) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Limited and others and their workman, which was received by the Central Government on 27.07.2018.

[No. L-30011/3/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/09/2017-18

Date: 12.06.2018

- Party No. 1(a)** : The Sr. Plant Manager,
M/s Indian Oil Corporation Limited,
Dhanj Bottling Plant, Dhanaj (Khurd),
State Highway No. 199, Tehsil. Karanja (Lad),
Distt. Washim Maharashtra – 444110
- Party No. 1(b)** : The Executive Director,
M/s Indian Oil Corporation Limited,
Maharashtra State Office, Indian Oil
Bhawan, Plot No. 33, G-Block, Bandra-
Kurla Complex, Bandra (East),
Mumbai – 400050
- Party No. 1(c)** : M/s Hemali Constructions, Contractor,
Dhotane (BK), Post-Nagpur, Tq. Nandgaon,
Distt. Nashik, Maharashtra – 423104
- Party No. 1(d)** : M/s Vishal Testing & Services, Contractor,
1/623, PGN Apartments, Muttukadu Road,
Kottivakkam, Chennai – 600041
- Party No. 1(e)** : M/s Akshay Agencies, Contractor,
B/21, Shrihari Complex, Sant Tukaram Chauk,
Distt. Akola, Maharashtra
- Party No. 1(f)** : M/s Shree Electricals, Contractor,
11/12, Shree Vastu Colony, Near Ganesh
Mandir, Vevekanand Nagar-2, Manmad,
Nandgaon, Nashik, Maharashtra – 423104
- Party No. 1(g)** : M/s G K Engineering, Contractor,
At/Po – Dhanaj (Khurd), Tal – Karanja (Lad),
Distt. Washsim, Maharashtra – 444110.
- Party No. 1(h)** : M/s Super Handling Co. Labour & Transport
Contractor, 4-C, Gurukripa Shopping Centre,
Ramkaka Road, Chhani, Vaddodara,
Gujarat – 391740.

Versus

- Party No. 2** : The Secretary,
Bhartiya Kamgar Sena,
Prafullaban Society,
R.K. Vaidya Road, Dadar (W),
Mumbai – 400028.

AWARD

(Dated: 12th June, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of M/s Indian Oil Corporation Limited & 6 contractors and their union, Bhartiya Kamgar Sena, for adjudication, as per letter **No.L-30011/3/2017- (IR(M) dated 15.05.2017**, with the following schedule:-

- “(i) **Whether Sri Nishant Kishore Tumsare and 73 other contract labourers (List enclosed) employed by the Indian Oil corporation Limited, Dhanaj Bottling Plant are entitled to bonus in respect of their period of employment through previous contractors? If yes, to what relief the contract labourers are entitled including the rate for payment of bonus and compensation for the delayed payment?**
- (ii) **Whether the management of Indian Oil corporation Limited, Dhanaj Bottling Plant and the contractors have committed unfair labour practice as prescribed under part-1,Item 1(a), 4(a), 4(f) & 5(b) of the Fifth Schedule, the Industrial Dispute Act, 1947?**
- (iii) **Whether the non-employment/termination of employment of Sri Nishant Kishore Tumsare, Devanand Damodar Rout, Vinod Akaram Khandwe and Suresh Wamanrao Ghode, contract**

labourers of Indian Oil Corporation Limited, Dhanaj Bottling Plant w.e.f. 01.10.2016 orally during the pendency of the conciliation proceeding and without compliance of section 33, 25-F & 25-H read with section 2(g) of the Industrial Dispute Act, 1947 is legal and justified? If not, to what relief the contract labourers are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 01.09.2017, Shri Vilas D Raut, advocate filed vakalatnama on behalf of the management but nobody appeared on behalf of the petitioner. On 03.11.2017, fresh notice was issued in favour of the petitioner, fixing the date on 29.11.2017, but on that day also, the petitioner as well as their advocate were absent. On 07.06.2018 also no statement of claim was filed. Advocate for the management was present and filed a pursis for closing of the reference. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1179.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 22/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-11011/3/2003-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2003) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airports Authority of India and their workman, which was received by the Central Government on 27.07.2018.

[No. L-11011/3/2003-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/22 of 2003

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

1. M/S. AIRPORTS AUTHORITY OF INDIA (IAD)
2. TDI INTERNATIONAL INDIA LTD.
 1. M/s. Airports Authority of India (IAD),
Mumbai Airports,
Mumbai – 400 099.
 2. M/s. TDI International India Ltd.
Terminal A, Santacruz Airports,
Mumbai – 400 099.

AND

THEIR WORKMEN

General Secretary,
Bhartiya Kamgar Sena,
Shivsena Bhavan, Gadkari Chowk,
Dadar, Mumbai – 400 028

APPEARANCES:

FOR THE EMPLOYER (1) : Ms. Geeta Raju, Advocate
i/b. M/s. M.V. Kini & Co.

(2) : No Appearance

FOR THE WORKMEN : Umesh Nabar

Mumbai, dated the 27th June, 2018.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11011/3/2003 – IR (M) dated 01.05.2003. The terms of reference given in the schedule are as follows :

“Whether the issuance of charter of demand by the Bhartiya Kamgar Sena to the Management of TDI International is justified and legal ? If yes, to what benefits the workmen are entitled ?”

2. After the receipt of the reference, both the parties were served with the notices.
3. As per order at Ex.30 the reference is withdrawn and is disposed off.
4. On going through Ex.30, it is submitted that on the date the demands have become infructuous and hence reference is withdrawn.
5. In view of Ex.30 the reference is withdrawn and hence disposed off.

ORDER

Reference is withdrawn & disposed off.

Date: 27.06.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अहिल्याबाई सरदेसाई, किरलापाले माइन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 26/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.07.2018 को प्राप्त हुआ था।

[सं. एल-29011/31/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st August, 2018

S.O. 1180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2012) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Ahiliabai Sardesai, Kirlapale Mine and their workman, which was received by the Central Government on 27.07.2018.

[No. L-29011/31/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/26 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/S. AHILIABAI SARDESAI.

The Managing Director,
M/s. Ahiliabai Sardesai,
Kirlapale Mine, SF-I, Navelkar Arcade,
Dr. Atmaram Borkar Road,
Panaji, Goa – 403 301.

AND

THEIR WORKMEN

The General Secretary,
Goa Mine Workers' Union,
Dr. Mukund Building, 2nd Floor,
Vasco-Da-Gama, Goa.

APPEARANCES:

FOR THE EMPLOYER : Mr. P. J. Kamat, Advocate

FOR THE WORKMEN : Mr. T. P. Pereira, Advocate

CAMP – GOA - dated the 6th June, 2018

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-29011/3/2011 – IR (M) dated 2.05.2012. The terms of reference given in the schedule are as follows :

“Whether the action of the management of M/s. Ahiliabai Sardesai, Kirlapale Mine, in retrenching 32 Plant workers of Benefication Plant w.e.f. 1/6/2011, is legal and justified ? What relief the workmen are entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. Having gone through the Roznama, it appears that concerned workman/union is absent since 3/11/2017. The Reference was kept for evidence of the concerned workman/union but the concerned workman/union has not filed affidavit in evidence despite several opportunities were given to them. Union is absent and no steps taken by the Union. In view of that the union/concerned workman has failed to substantiate the claim by adducing evidence. The Reference is liable to be rejected and accordingly the Reference is rejected.

ORDER

Reference is rejected.

Date: 06.06.2018

[CAMP – GOA]

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 2/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.07.2018 को प्राप्त हुआ था।

[सं. एल-22012/91/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.07.2018.

[No. L-22012/91/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 25th day of June, 2018

INDUSTRIAL DISPUTE No. 2/2016**Between :**

Sri Bandari Lingaiah,
 President, Singareni Collieries Employees
 Union (CITU), Qr. No.39-T, Somagudem X Roads,
 Somagudem, (via Bellampalli)
 Adilabad (Telengana)- 504251

...Petitioner

AND

The General Manager,
 M/s. Singareni Collieries Company Ltd.,
 Mandamarri Area, Mandamarri (P.O.) -504231.
 Adilabad Distt. (Telengana State).

...Respondents

Appearances :

For the Petitioner : None
 For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/91/2015-IR(CM-II) dated 23.12.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Adilabad Distt. in terminating the services of Sri T. Haribabu, Ex-Coal Filler, Kasipeta Mine Inc., SCCL, Mandamarri Area with effect from 7.6.2002 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 2/2016 and notices were issued to the parties concerned to procure their attendance.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner Union/workman did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. No claim statement is filed by the Petitioner Union/workman in spite of taking several adjournments. Non-appearance of the Petitioner Union/workman and non-filing of claim statement in time, clearly indicates that perhaps the parties have settled their dispute and the Petitioner union/workman has no claim to raise. Hence, it is not desirable to linger the case to any further date. Thus, the case of the Petitioner Union/workman is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 25th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 39/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.07.2018 को प्राप्त हुआ था।

[सं. एल-22012/23/2009-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.07.2018.

[No. L-22012/23/2009-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 27th day of June, 2018

INDUSTRIAL DISPUTE No. 39/2009**Between :**

The General Secretary
(Sri Riyaz Ahmed),
Singareni Miners & Engg. Workers Union(HMS),
Qtr. No.C-34, Sector-I,
Godavarikhani,
Karimnagar – 505209

...Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Yellandu Division,
Yellandu (P.O.), Khammam (Dt.)

...Respondents

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/23/2009-IR[CM-II] dated 28.7.2009 whereunder this Tribunal is required to adjudicate the dispute i.e.,

“Whether the action of the Management of M/s. Singareni Collieries Company Limited, in imposing penalty of reducing 5 increments with cumulative effect from 01.07.2007 in respect of Sri A. Rajeswara Rao is legal and justified? To what relief is the workman concerned entitled?”

After receiving the above said reference, it was registered as ID No.39/2009 in this Tribunal and notices were issued to both the parties and secured their presence.

2. Pursuant to the notice, the Petitioner appeared and filed claim statement.
3. Respondents appeared and filed their counter.
4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 30.6.2016.
5. While the case is posted for arguments, at this stage, the Learned Counsel for the Petitioner workman filed a memo to withdraw the present case and accordingly, the copy of the memo was served to the Respondent.
6. In view of the memo filed by the Counsel for the Petitioner Union, the memo is accepted and the case is allowed to be withdrawn by the Petitioner Union.

The reference is answered accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 27th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 128/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.07.2018 को प्राप्त हुआ था।

[सं. एल-22012/80/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 128/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.07.2018.

[No. L-22012/80/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 25th day of June, 2018

INDUSTRIAL DISPUTE No. 128/2015

Between :

Sri Thopparthi Banaiah,
S/o Ashalu,
H.No.3-41, Kishtampet (V),

Chennur (M),
Warangal Distt. 504204

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bhupalapalli Area, Bhupalapalli -506 169.
Warangal Distt. (Telengana State)

...Respondents

Appearances :

For the Petitioner : None

For the Respondent : Sri V.S.V.S.R.K.S. Prasad, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/80/2015-IR(CM-II) dated 26.11.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt., in terminating the services of Sri Thopparthi Banaiah, Ex-Coal Filler, KTK-2 Inc., SCCL, Bhupalapalli Area with effect from 2.1.2007 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 128/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. No claim statement is filed in spite of taking several adjournments. Non-appearance of the Petitioner and non-filing of claim statement in time, clearly indicates that perhaps the parties have settled the dispute and the Petitioner has no claim to raise. Hence, it is not desirable to linger the case to any further date. Thus, the case of the Petitioner is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 25th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 206/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.07.2018 को प्राप्त हुआ था।

[सं. एल-22012/52/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 206/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.07.2018.

[No. L-22012/52/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 29th day of June, 2018

INDUSTRIAL DISPUTE No. 206/2014

Between :

The President,
(Bandari Satyanarayana),
Rashtriya Collieries Mazdoor Sangh (RCMS),
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherial -504 208.
Adilabad District

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Sreerampur Area, Sreerampur-504303.
Adilabad District

...Respondents

Appearances :

For the Petitioner : None
For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/52/2014-IR(CM-II) dated 16.9.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area, Adilabad Distt. in terminating the services of Sri Md. Saheb Hussain, Ex-Coal Filler, IK-1A inc., Sreerampur Area-with effect from 01.01.2005 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 206/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner Union.
3. In spite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Workman/Union to attend the court to prosecute his case. But the Petitioner workman/union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman/union has already been settled and the Petitioner Union has nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman/Union is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 29th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 207/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.07.2018 को प्राप्त हुआ था।

[सं. एल-22012/57/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 207/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.07.2018.

[No. L-22012/57/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 29th day of June, 2018

INDUSTRIAL DISPUTE No. 207/2014**Between :**

The President,
(Bandari Satyanarayana),
Rashtriya Collieries Mazdoor Sangh (RCMS),
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherla -504 208.
Adilabad District

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri -504231
Adilabad District

...Respondent

Appearances :

For the Petitioner : None

For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/57/2014-IR(CM-II) dated 12.9.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri Adilabad Distt. in terminating the services of Sri P. Ramulu, Ex-Coal Filler, Shantikhani, Mandamarri Area with effect from 22.1.2003 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 207/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner Union.
3. In spite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Workman/Union to attend the court to prosecute his case. But the Petitioner workman/union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman/union has already been settled and the Petitioner Union has nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman/Union is closed and a ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 29th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 97/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.07.2018 को प्राप्त हुआ था।

[सं. एल-22013/01/2018-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.07.2018.

[No. L-22013/01/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 27th day of June, 2018

INDUSTRIAL DISPUTE L.C. No. 97/2009**Between :**

Sri Koraveni Srinivas,
S/o Chantaiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College
for Girls, Kachiguda, Hyderabad

...Petitioner

AND

1. The Director (PA & W),
The Singareni Collieries Company Limited,
Kothagudem, Khammam District.
2. The Chief General Manager,
Singareni Collieries Company Ltd,
Srirampur Area, Srirampur, Adilabad Dist.
3. The Superintendent of Mines,
RK-6 Incline, Singareni Collieries Company Ltd.,
Srirampur, Adhlabad Dist.

....Respondents

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri Koraveni Srinivas, who worked as Coal Filler (who will be referred to as the workman) has filed the petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the respondents M/s. Singareni Collieries Company Ltd., represented by its employees seeking for declaring the proceeding No.SRP/PER/13.008/980 dated 10.03.2009 issued by Respondent No.2 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows :

The petitioner was given appointment under dependent quota on 25.03.2000 as Badli Filler and he was confirmed as Coal Filler. While the matter stood thus, charge sheet was issued to him alleging that, he obtained employment by producing forged documents. The petitioner submitted his reply to the charge sheet denying the charge. While submitting reply, the petitioner pleaded that he married the daughter of Late Sri Uppuleti Mondi in the year 1997 and he was given employment in the capacity of son-in-law of Late Sri Uppuleti Mondi. The petitioner pleaded that, in support of his claim, he submitted the marriage certificate to the competent authority. Thereafter, an enquiry was conducted, wherein, no witnesses were examined on behalf of the Management, whereas, he examined himself and also examined other three on his behalf, as Witness DW1 to DW3. But, without considering the evidence on record, the enquiry officer held the charge as proved. Basing on such report of the enquiry officer, a show cause notice dated 22.10.2008 was issued, to which, the petitioner submitted his explanation on 04.11.2008. But, without considering the same, impugned proceeding dated 10.03.2009 was issued dismissing him from service w.e.f. 15.03.2009. The petitioner pleaded that the charge alleged against the petitioner is wholly illegal and he was dismissed from service arbitrarily after putting nearly 9 years of service. Though the petitioner approached the respondents to consider his case justifiably, but the Management did not pay any heed to it. Therefore, the petitioner was constrained to approach this Tribunal to declare the impugned proceeding No.SRP/PER/13.008/980 dated 10.3.2009 issued by Respondent No.2 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc.

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows :

In the counter, the Respondents while admitting some of the factual aspects to be true, stated that, the Petitioner was appointed as Badli Filler under Dependent Employment Scheme on 25.3.2000 as son-in-law of Late Sri Uppuleti Mondi, Ex-Coal Filler, GDK-3 Incline, who was declared as unfit to work as Coal Filler. The Respondents also pleaded that from the date of his appointment to the date of his dismissal, the Petitioner is regular to his duties and his attendance, conduct

and work performance were quite satisfactory. The Respondents further contended that, basing on the recommendations of the Vigilance Department holding that, the Petitioner was not the son-in-law of Late Uppuleti Mondli, Ex-Coal Filler, GDK-3 Incline, a charge sheet dated 3.10.2005 was issued to him under Company's Standing Order No.25.1 & 25.10, a detailed domestic enquiry was conducted and basing on the report submitted by the enquiry officer, a show cause notice dated 22.10.2008 was issued enclosing the report of the enquiry officer. On receipt of show cause notice, the Petitioner submitted his representation dated 4.11.2008 and after considering the representation and the record of enquiry. The Petitioner was dismissed from service w.e.f. 14.3.2009 vide letter dated 10.3.2009. The Respondents contended that, as the petitioner obtained employment by producing false and fabricated documents, the management was constrained to initiate the disciplinary proceedings. It is further contended that, the Vigilance Department conducted thorough enquiry before initiating the disciplinary action. During such enquiry, it is established that Smt.U.Swapna was not the wife of the petitioner and this factum was even accepted by her mother i.e. U.Gangamma (DW3) in her statement given to the Vigilance Department and various documents obtained by the Vigilance Department establishes the charge against the petitioner. The Respondents further contended that, the Petitioner has fully participated in the enquiry and he was given full and fair opportunity to defend his case. Basing on the material evidence produced by the Presenting Officer and also oral evidence from the concerned persons before the enquiry officer, charges were established. As such, having considered the evidence on record, the disciplinary authority imposed the penalty of dismissal from service on the Petitioner.

4. In view of the memo filed by the Counsel for the Petitioner conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 3.3.2014.

5. Both the parties have advanced their arguments under Sec. 11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are :**

- I. Whether the action of the management of M/s.Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Koraveni Srinivas is legal and justified ?
- II. Whether the Petitioner is entitled for reinstatement into service ?
- III. If not, to what other relief he is entitled ?

7. **Point No.I:** At the outset Counsel for the Petitioner submitted that, while deposing during the course of regular enquiry, the petitioner categorically pleaded that, his marriage was performed with Swapna on 09-05-1997 and the said marriage was even registered with the Registrar of Marriages, Mancherial and he has already submitted the marriage certificate (MD-20) to the Company. The Petitioner also deposed that, their marriage was inter caste and love marriage. His mother-in-law i.e. DW3 applied for his appointment under the Dependent Employment Scheme and the officials of the Company and the Committee for Dependent Employment, having verified and got satisfied with the application submitted by his mother-in-law, he was given employment as Badli Filler. He has also deposed that, he has not submitted any false and fabricated documents, as alleged. On conclusion of his statement, he was cross examined by the Presenting Officer. The petitioner at Q.Nos.23 & 24 once again reiterated that, his mother-in-law i.e. DW3 applied for his dependent employment and, while doing so, they have submitted all the documents necessary for claiming dependent employment. At Q.No.25, the petitioner deposed that, his wife Swapna was aged about 19 years at the time of submitting the application for dependent employment. At Q.Nos.30 & 31, the petitioner deposed that, his marriage with Swapna was performed at Godavarikhani in presence of relatives and friends. At Q.No.33, the petitioner deposed that, his marriage was performed in presence of his mother-in-law and his parents, in addition to others. At Q.No.37, the petitioner deposed that, their marriage was inter-caste marriage. At Q.No.40, the petitioner deposed that, MD-15 is their marriage photo, which shows, himself and his wife Swapna. At Q.No.45, the petitioner deposed that, his marriage was performed with Swapna and not with Padma.

8. The Counsel for the Petitioner also submitted that, during the regular enquiry, DW1 categorically deposed that, Sri Uppuleti Mondli was his co-workman. He knows the family of Late Sri Uppuleti Mondli and on the request of DW3 i.e. wife of Late Sri Uppuleti Mondli, he signed as a witness on the application submitted by DW3 for appointment of the petitioner, under Dependent Employment Scheme. He also deposed that, during the interview conducted by the Dependent Employment Committee, he appeared and signed as a witness, on the papers (forms) confirming the petitioner as the son-in-law of Late Sri Uppuleti Mondli. During the cross examination he deposed that, he and Late Sri Uppuleti Mondli worked together for 7 years and the family members of Late Sri Uppuleti Mondli came to Mine premises to apply for dependent employment, and he met them there. DW1 also deposed that, on being introduced by DW3 and mother of Uppuleti Mondli, in front of all the workmen and officers, he came to know that the petitioner is the son-in-law of Late Sri Uppuleti Mondli.

9. Counsel for the Petitioner further submitted that, during the regular enquiry, DW2 deposed that, Late Sri Uppuleti Mondi, was his co-workman at GDK-3 Incline and Late Sri Mondi and he himself used to reside in Seetanagar area and as such, they know to each other. DW2 further deposed that, DW3 and the mother of Late Sri Uppuleti Mondi came to his house and informed him that, they are applying for employment to their son-in-law i.e. the petitioner and requested him to sign as a witness. He Stated that as Late Sri Uppuleti Mondi was his co-workman, when the family of Late Sri Uppuleti Mondi came to the mine premises, he has signed on the application form confirming the petitioner as the son-in-law of Late Sri Uppuleti Mondi. During the cross-examination, DW2 at Q.Nos.1, 2 & 3 categorically reaffirmed that, Late Sri Uppuleti Mondi and he used to reside at Seetanagar area. DW2 also deposed that, marriage of the petitioner and Swapna was performed, and also deposed that, he signed on the application for dependent employment of the petitioner.

10. The counsel for the Petitioner also argued that, during the regular departmental enquiry, though the Presenting Officer has not chosen to examine any witnesses, thereafter the petitioner was examined himself and on his behalf DW1 to DW3 were examined. DW3 was none other than the petitioner's mother-in-law i.e. the wife of Uppuleti Mondi and the mother of the petitioner's wife Smt Swapna. DW3 has categorically deposed during the enquiry that, the petitioner is the husband of her elder daughter Swapna. Both of them were got married in the year 1997 in Ramalayam in Seetanagar of Godavarikhani. The Petitioner being her son-in-law, she applied for his dependent employment by submitting an application, which was counter signed by DW1 & DW2, who were the co-workmen of her Late husband. During the course of cross examination, the evidence of DW1 to DW3 remained unrebutted. However, such unrebutted evidence of the petitioner & DW1 to DW3 was ignored, by relying upon the documents collected and the statements recorded during the preliminary enquiry by the Vigilance Authorities. During the enquiry, neither any Vigilance Authorities were examined nor any documents were proved, through any competent witness.

11. During the course of arguments, the Learned Counsel appearing on behalf of the Petitioner submitted that, whenever a departmental enquiry is conducted, the PO/Management representative should produce the relevant documents, to mark and prove it, through relevant witnesses, to substantiate the charge. The Presenting Officer himself cannot treated as lone witness, to depose the evidence. In the instant case, one Sri.A.Sampath Kumar, Dy.P.M. deposed as the PO and produced Exs MD-1 to MD-23, but he has not chosen to examine any witnesses to prove the documents produced by him. However, exclusively relying upon those unproved documents, charge was held proved by the enquiry officer. Basing on such finding of the enquiry officer, the Petitioner was dismissed from service. While submitting the above aspects, the Learned Counsel for the Petitioner relied upon a case Law reported in 2011 (3) ALD 442 – GM, SCCL Ltd., Mandamarri Division, Kalyankhani, Adilabad Vs. Mohd. Fareed, wherein the Hon'ble High Court of A.P. held that, "In the instant case, the charge against the respondent was that, he filed a fake medical certificate pertaining to his father. The petitioner (i.e. company) was under obligation to prove that charge by examining the persons, who came to the conclusion, or confirmed the opinion that the certificate is fake. The case was presented before the enquiry officer by the Presenting Officer. Not a single witness was examined. For all practical purposes, the Presenting Officer answers the description of a Counsel, and by no stretch of imagination, he can be treated as witness, much less, he can vouch for the correctness or otherwise of the documents, produced by him. It is only the persons who are the custodians of the concerned records, or who are acquainted with the facts of the case, that can be examined as witnesses and who can throw light upon a truth or otherwise of the allegation or charge. Once it has emerged that no person was examined in support of the charge, the inescapable conclusion is that, the charge was not proved at all. The Labour Court noticed this serious flaw, and held that the charge against the respondent was not proved. This court is not inclined to take any different view.

12. The counsel for the Petitioner also contended that, in the instant case also, Presenting Officer has not examined any witness nor proved any document. Only the statement of the Presenting Officer was recorded and basing on his statement and unproved documents produced by him, the Enquiry Officer held the charge as proved. Such conduct on the part of the Enquiry Officer was deprecated by the Hon'ble High Court of A.P. in the above referred case, more interestingly, in the above cited case also, the management was Singareni Collieries Company Ltd., and in the present case also the Management is the Singareni Collieries Company Limited.

13. The counsel for the Petitioner further urged that, when the management alleges that, the petitioner obtained employment by producing fabricated documents, false information and witnesses, onus lies on the management to prove the charge. Mere filing of documents is not sufficient to rely upon, but, those documents are to be marked and proved during the enquiry through relevant witnesses. In the instant case, the management did not examine any witnesses except recording the statement of the Presenting Officer. The sole statement of the Presenting Officer, cannot be treated as evidence of any witness. As such, the documents relied upon by the Presenting Officer cannot be relied upon to substantiate the charge.

14. In support of the above contention, the Learned Counsel for the Petitioner relied on the following judgments reported in AIR 1972 SC 1031 – Delhi Cloth & General Mills Vs. Lud Bud Singh, whereat, the Hon'ble Supreme Court held that, "The Enquiry Officer has also committed another mistake when he proceeded on the basis that as the workman has not adduced any evidence in his defence, it is not open to him to contend that he was not responsible for the acts of destruction and damages. This observation clearly shows that the Enquiry Officer has missed the elementary principle of

jurisprudence that when allegations of misconduct are levelled against a person, it is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty” In WA No.37/2013 – SPDCL Vs. Yesudas, the Division Bench of the Hon’ble High Court of A.P. held that, WA No.37/2013 – SPDCL Vs. Yesudas, “The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence, i.e. the correspondence between the Head Master, Medikondue collected during investigation by the Investigating Officer against the respondent by itself, could not be treated to be evidence in the disciplinary proceeding, inasmuch as no witness was examined to prove the said documents. The management witnesses merely tendered the documents sent by the said Head Master and did not prove the contents thereof. Reliance was placed by the Enquiry Officer on such correspondence which could not have been treated as evidence. Therefore, the only basic evidence whereupon reliance has been placed by the Enquiry Officer, was the purported documents appended in the service register of the respondent, to which there was no direct evidence. Even there was no indirect evidence. The Enquiry Officer, without applying his mind in proper perspective as to how the said document was appended in the service register of the respondent had made up his mind to find him guilty, as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left. It is to be seen, there is a distinction in proof and suspicion. In DEE (O) AP TRANSCO, Guntur & another Vs. Labour Court, Guntur & another, reported in 2011 (3) ALD 536, the Hon’ble High Court of A.P. held as follows : “It is not in dispute that no witnesses were examined by the Domestic Tribunal. It straightaway proceeded to examine the workman and concluded the inquiry. Therefore, the TRANSCO had failed to discharge the initial burden lying on it to bring home the guilt of the workman by leading specific evidence in respect of the charge laid against him. Until and unless this primary onus is discharged by the employer, no obligation to prove his defence shifts on to the shoulders of the employee. It is one thing to say about the sufficiency of the material, but it is altogether a different thing to say that the initial burden of establishing the charge itself has been not discharged. Further, when the Headmaster of the school has been contacted by the Divisional Engineer, he sent up a communication raising doubts about the genuineness of the certificate produced by the workman. Unless the Headmaster has been examined and the workman has been provided with an opportunity to cross examine him the workman could not have established his defence properly and he could not have brought home his defence that he is not guilty of producing any false educational certificate. He would have an opportunity to explain away the adverse material which lent support to suspect the genuineness of the certificate produced by him. In that view of the matter, non-examination of the Headmaster of the school, certainly, amounts to denying a fair and reasonable opportunity of enabling him establish his defence”. In 2011 (1) ALD 713 – S.L.Narsaiah Vs. Addl. Labour Court, Hyderabad, the Hon’ble High Court of A.P. held that, “In the disciplinary proceedings, basically it is for the employer or the management to prove the charges framed against an employee. The mere fact that the employee did not adduce any evidence does not become material. Further it would be mostly in the form of rebuttal evidence. Therefore, much would depend upon the strength of the evidence which the employer maintained”.

15. Counsel for the Petitioner further pleaded that, in catena of judgments the Hon’ble Supreme Court as well as the Hon’ble High Courts held that, the role of preliminary EO and the documents collected and statements recorded, during the preliminary enquiry, becomes redundant, once a decision is taken to conduct the regular departmental enquiry. During the regular departmental enquiry, if, the management wanted to rely upon the statements recorded during the preliminary enquiry, then such of those witnesses, who were examined in the preliminary enquiry should be produced in the regular departmental enquiry, giving an opportunity of cross examination to the petitioner. Then only, the statements recorded during the preliminary enquiry can be relied upon. The counsel for the Petitioner pleaded that, the EO relied upon the statements allegedly recorded by the Vigilance Department from U.Gangamma (DW3), to hold the charge as proved, without even examining the Vigilance Authorities. During the regular enquiry, DW3 categorically denied the correctness of the statements allegedly recorded by the Vigilance Authorities and also CD relied upon by the Vigilance Department. Despite, ignoring the evidence recorded during the regular departmental enquiry, by relying upon the alleged statement recorded by the Vigilance Authorities during the preliminary enquiry, the enquiry officer held the charge as proved. Counsel for the Petitioner pleaded that, such finding of the enquiry officer is illegal and contrary to the dicta laid down by the Hon’ble High Courts & Hon’ble Supreme Court. The learned Council for the petitioner in support of his stand relied upon the following judgments: Reported in 2001 (5) ALT 65 (DB) – K.David Wilson Vs. Secretary to Government, Law Department (Legislative Affairs and Justice), Hyderabad and another, “It is well settled that the disciplinary authority cannot make use of any material of evidence collected by it in the course of preliminary enquiry against the delinquent official unless those materials and evidence are produced and proved in accordance with law in the regular departmental enquiry and the delinquent employee is given a fair opportunity to meet those adverse materials and evidence. In the instant case this well settled rule governing departmental enquiry is completely breached. On that count also, the departmental enquiry conducted against the petitioner is vitiated. A departmental enquiry conducted for the purpose of disciplinary action against a public servant is not an empty formality. It is a serious proceeding intended to give the delinquent a chance to meet the charges and prove his innocence. The right of the delinquent officer to cross-examine witnesses who give evidence against him is a valuable right and in order to effectively exercise this right, it is necessary that the examination-in-chief of the witnesses should be recorded in the presence of the party against whom the deposition is made. An enquiry wherein examination-in-chief has been recorded in the absence of the person charged though he is allowed to cross-examine the witness, cannot be said to have been held in accordance with the rules of

natural justice. This position is well settled by the Judgments of the Supreme Court in *Union of India V. T.R.Varma*, *Jagdish Prasad Saxama V. State of Madhya Bharat*, *State of Madhya Pradesh V. Chintaman Sadasiva* and a catena of other decisions to follow. The Calcutta High Court in *Choudhury V Union of India* and others, where the concerned employee was confronted with the evidence of the witnesses examined behind his back and where some of such witnesses were not tendered for cross-examination held that the enquiry was vitiated by violation of principle of natural justice and the dismissal order based on such enquiry must be held to be invalid". The same principle was reiterated by Hon'ble Apex Court in a case reported in (2013) 4 SCC 301 – *Nirmala Jhala Vs. State of Gujrat*, wherein it was held, "we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had placed a very heavy reliance on the statement made by Shri C.B.Gajjar, Advocate, Mr.G.G.Jani, complainant and that of Shri P.K.Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she has no opportunity to cross-examine either of them. A Constitution Bench of this court in *Amalendu Ghosh V. North Eastern Railway*, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held. Similarly in *Champaklal Chimanlal Shah V. Union of India*, a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311 (2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under (AIR p.1862, para 12), "12. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article (, nor prior to that)" In *Narayana Dattatraya Ramteerthakhar Vs. State of Maharashtra*, this Court dealt with the issue and held as under : "... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence." "In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice." In *Ayaubkhan Noorkhan Pathan V. State of Maharashtra* this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry".

16. On the other hand the learned Counsel for the respondents reiterated the contents of the counter and argued that, as the charge was established in the enquiry, punishment imposed on the Petitioner is justified and no interference is required by this Court. The counsel for the respondents contended that, as most of the documents relied upon by the Presenting Officer are official documents, they need not be specifically proved through any relevant witnesses. The enquiry officer has rightly conducted a detailed and elaborate enquiry and after considering the evidence available on record, he has rightly held the charges as proved. The counsel for the respondents further contended that, on receipt of reply to the show cause notice, the disciplinary authority also considered all the records in detail and found that the findings of the enquiry officer are perfect and as such, punishment was imposed on the petitioner for obtaining employment fraudulently. He further contended that the domestic enquiry conducted in this case is held legal and valid, So the petitioner has no locus-standi to re-agitate the same issue.

17. On consideration of the submission made by the consels for both the sides and on a bare perusal of the evidence adduced during the enquiry by the petitioner along with the evidence of DW1 to DW3 establishes about, the factum of performance of marriage between the petitioner and the elder daughter of DW3 i.e. Swapna. It was also established that, DW3 herself applied for the dependent employment of the petitioner, which was even signed by DW1 & DW2. It was also proved during the enquiry that, the marriage of the petitioner and the elder daughter of Sri Uppuleti Mondhi, was registered with the Registrar of Marriages, Mancherial and the said certificate was produced before the authorities, while seeking dependent employment. It was also established that, while considering the application for dependent employment of the petitioner, the Dependent Employment Committee and the authorities of the 1st respondent company, have thoroughly verified the credentials of the petitioner, and only after satisfying themselves, the petitioner was given employment. Therefore, holding the charge as proved by the enquiry officer and dismissing the petitioner from service, is wholly untenable.

18. As pointed out by the counsel for the Petitioner, during the cross examination, the Presenting Officer has categorically admitted that, basing on the application submitted by DW3 and also the statement of DW1 & DW2, the Departmental Interview Committee recommended the case of the petitioner for dependent employment and the same was done, as per the procedure existing in the Company. The Presenting Officer also accepted that, application submitted by DW3 seeking employment to the petitioner, application for employment under Clause-9.4.1 of NCWA and the statements of the witnesses i.e. DW1 & DW2 to provide employment to the petitioner, were verified by the Head of the Department before issuing the order of appointment to the petitioner. The Presenting Officer also accepted that, the Management never felt MD24, 25 & 26 are false documents and by treating those documents as valid documents, the petitioner was given employment. However, the Presenting Officer stated that, basing on the preliminary enquiry conducted by the Vigilance Department, the management feels that the petitioner was not a bonafide son-in-law of Late Sri Uppuleti Mondli. However, the fact remains that, the documents collected during the preliminary enquiry were obtained behind the back of the petitioner, which were not proved, during the enquiry, no witness including any officials of the Vigilance Department were examined, during the course of regular departmental enquiry, to prove those documents.

19. As a matter of fact, the Presenting Officer accepted that, only on the recommendation of the Dependent Interview Committee, the petitioner was given employment. The Presenting Officer accepted that, marriage certificate issued by the Registrar of Marriage has not been declared as false, either by any competent authority or by court. However, basing on the documents procured by the Vigilance Authority during the preliminary enquiry, it is being treated that, the petitioner's marriage with Swapna was not bonafide in nature. The Presenting Officer further stated that, though he was not a management witness, his statement is sufficient to prove the charge and other witnesses need not be produced in support of the charge alleged. Such contention of the Presenting Officer is wholly illegal and contrary to the well established law and principles of natural justice and contrary to the law laid down by the Hon'ble High Court of A.P. in 2011 (3) ALD 442. Relying upon the sole statement of the PO, the charge cannot be treated as proved, as held by the Hon'ble High Court of A.P. in GM, SCCL Ltd, Mandamarri Division Vs. Mohd. Fareed, reported in 2011 (3) ALD 442

20. As per the judgments relied upon by the counsel for the Petitioner, the PO cannot be treated as a witness and his sole statement cannot be relied on to substantiate the charge as was laid down by the Hon'ble High Court of A.P. in the reported judgment in 2011 (3) ALD 442. In the instant case, except recording the statement of the Presenting Officer, no other witness was examined on behalf of the management. The counsel for the Petitioner also rightly pointed out that, mere filing of documents is not sufficient. The documents should be proved through relevant witnesses during the regular departmental enquiry and onus to prove the charge is on the person, who alleges. As submitted supra, the above proposition of law was time and again reiterated by the Hon'ble Supreme Court as well as the Hon'ble High Court of A.P. in AIR 1972 SC 1031, WA No.37/2013, 2011 (3) ALD 536 & 2011 (1) ALD 713.

21. The statements recorded and the documents obtained by the vigilance authorities are basically amounts to preliminary enquiry. Basing on those statements and documents, a charge sheet was issued to the petitioner. Once a decision is taken to conduct a regular departmental enquiry, the statements recorded and the documents obtained during the preliminary enquiry become redundant unless, the persons, whose statements were obtained during the preliminary enquiry are examined during the regular departmental enquiry duly providing the opportunity of cross examination and prove the documents through relevant witnesses during the regular departmental enquiry. In the instant case, no witness was examined and none of the documents i.e. MD1 to ME23 were proved during the regular departmental enquiry. In view of the judgments referred supra, i.e. 2001 (5) ALT 65 (DB) & (2013) 4 SCC 301 and for violation of principles of natural justice, the findings of the Enquiry Officer amounts to perverse findings and the impugned order of dismissal, which was issued basing on such perverse findings of the EO, is liable to be set aside.

22. The conclusion arrived at by the EO that, the petitioner has not married to Swapna, D/o Late Uppuleti Mondli is an absolute perverse finding, as, the evidence recorded during the course of regular departmental enquiry, not only from the petitioner but also from DW1 to DW3, more specifically, the assertion of DW3 clearly establishes that, the petitioner got married to Swapna. Further, it is also an established fact that, their marriage was registered with the Registrar of Marriages, Mancherla and the said document is subsisting even as on today, which was even admitted by the PO during the course of cross examination. Ignoring all the valid evidence, only by relying upon the statements recorded by the Vigilance Department during the preliminary enquiry, the Enquiry Officer ought not to have arrived at such arbitrary and presumptive conclusion, holding the charge as proved. The Enquiry Officer has to consider the evidence recorded during the course of regular departmental enquiry, but not the statements recorded during the preliminary enquiry. But, in the instant case, conclusion of guilt on the part of the petitioner, was arrived at by the Enquiry Officer, exclusively basing on the material collected during the preliminary enquiry, thereby making his findings as perverse in nature.

23. The Enquiry Officer should act like a judge and should not be biased. Further, basing on the evidence recorded during the course of enquiry only, the Enquiry Officer has to submit his report. Admittedly, documents considered and relied upon by the Enquiry Officer to hold the charge as proved, have not been proved during the regular enquiry, through any relevant witnesses. Therefore, reliance placed by the Enquiry Officer on such of those unproved documents is wholly unjustifiable. On a bare perusal of the appreciation of the evidence by the Enquiry Officer in his report clearly

establishes that, basing on the documents, which have not been proved during the enquiry, the Enquiry Officer disregarded or disbelieved the evidence adduced during the course of regular departmental enquiry.

24. In this regard, the counsel for the Petitioner relied on a case law reported in (2010) 2 SCC 772, in State of U.P. Vs. Saroj Kumar Sinha, while asserting the necessity of EO to act unbiasedly like a judge, while conducting & submitting his report held that, "It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority / Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents. Apart from the above, by virtue of Article 311 (2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee".

25. In view of the above discussion, the punishment imposed by the Respondents for dismissal of service is wholly illegal and arbitrary. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Koraveni Srinivas is not legal and justified.

Thus, Point No.I is answered accordingly.

26. **Point Nos.II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Koraveni Srinivas is not legal and justified. After dismissal of service as stated earlier, the Petitioner has come to the court with a prayer for his reinstatement into service. As the Petitioner was dismissed from service arbitrarily, he is entitled to be re-instated in service as Coal Filler with continuity of service. But the petitioner was terminated from service and has not done any work, so he is only entitled to get 50% of back Wages.

Thus, Point Nos. II and III are answered accordingly.

ORDER

The impugned proceeding No.SRP/PER/13.008/980 dated 10.3.2009 issued by the 2nd Respondent is illegal and arbitrary and is hereby set aside. The Respondents are directed to reinstate the Petitioner into service with continuity of service. Since the Petitioner has not worked for the period from the date of dismissal till date he is only entitled to get 50% of back wages.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 27th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1187.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स केन्द्रीय भण्डार के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 26/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.07.2018 को प्राप्त हुआ था।

[सं. एल-42012/155/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 2nd August, 2018

S.O. 1187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of M/s. Kendriya Bhandar and their workmen, received by the Central Government on 31.07.2018.

[No. L-42012/155/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 26/2005

Ref. No. L-42012/155/2004-IR(CM-II) dated 24.06.2005

BETWEEN

Sri Avinash Nigam S/o Sh.Suresh Chandra,
R/o 566/28, G, Jaiprakash Nagar,
Lucknow (U.P.)

AND

1. The General Manager,
Kendriya Bhandar,
Pushpa Bhawan,
New Delhi
2. The Regional Manager,
Kendriya Bhandar,
HAL Shopping Complex,
Lucknow

AWARD

1. By order No. L-42012/155/2004-IR(CM-II) dated 24.06.2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Avinash Nigam S/o Sh. Suresh Chandra and the General Manager/Regional Manager, Kendriya Bhandar, New Delhi/Lucknow adjudication.
2. The reference under adjudication is:
“KYA PRABANDHAK, KENDRIYA BHANDAR, LUCKNOW DWARA SRI AVINASH NIGAM S/O SRI SURESH CHANDRA, DAINIK VETAN ME KARYARAT CLERK-CUM-TYPIST KO DINANK 12.06.2002 SE NAUKARI SE NIKALA JAANA NYAYOCHIT TATHA NYAYSANGAT HAI? YADI NAHIN, TO SAMBANDHIT KARMKAR KIS ANUTOSH KA HAQDAR HAI?”
3. As per claim statement W-3 dated 28.10.2005, the petitioner has stated in brief that he was appointed as Clerk-cum-Typist on daily wages by opposite party no.3/Regional Manager, Kendriya Bhandar on 15.06.1997 with the consent of opposite party nos.1 & 2. He has further asserted that he has been working continuously at Regional

Manager's office, Lucknow as per directions of opposite party with full satisfaction, and no complaint was ever lodged against him, the vacancy was clear and permanent in nature, and for regularization on daily wage workers of Lucknow region, through letter dated 4.11.1998, opposite party no.3 recommended for regularization, and the petitioner was senior to Sri Jyoti Pravartak.

4. The petitioner has pleaded that opposite party no.2 issued a letter dated 4.11.1998 for regularization of few daily wage worker upto sl.no.6 only, therefore opposite party no.3 again sent letter dated 28.8.2000 with the request to regularize the remaining two persons and it was assured to the management committee that the names mentioned at sl.no.7 and 8 have completed 3 years of service in the organization, and their work and conduct was found to be satisfactory during the last 3 years. It has been alleged by the workman that opposite party no.3 allotted sl.no.7 to Sri Jyoti Pravartak and sl.no.8 to the petitioner, although the petitioner was senior to him, objection was raised against this anomaly and discrimination. Sri Jyoti Pravartak was regularized by opposite party no.1 & 2 and did not consider the legal claim of the applicant. Several oral and written requests were made by the petitioner and in compliance of the formalities required by the management he had also deposited Rs.5000/- towards security through FDR in favour of Kendriya Bhandar, even then his claim was not considered and grievances were not redressed.
5. It has further been stressed by the petitioner that on his frequent request for the regularization , opposite party no.3 stopped the payment of salary for the month of May 2002 and w.e.f. 12.06.2002 attendance register was also not provided when he approached the office to perform his duties in the usual course. Mandatory provisions of law for retrenchment were not followed and he was debarred to work w.e.f. 12.06.2002. Violation of Section 25 etc. of the I.D. Act has also been alleged.
6. With the aforesaid pleadings request has been made to set aside the oral termination/'debar from work' order dt. 12.06.2002, and to reinstate the petitioner in service with full back wages alongwith consequential benefits etc. Several documents have been annexed with the claim statement.
7. The management has filed written statement M-24 dated 22.12.2005 with denial of the allegations leveled in the claim statement. The management has submitted that although several names of daily wage earners alongwith the applicant were sent for consideration for regularization of service but thereafter the petitioner changed his attitude towards his duties and therefore he could not get the benefit of the same. The opposite party has alleged that the conduct of the petitioner was not found satisfactory and to continue him in the department had become a source of indiscipline, fraud, impertinence, cheating etc., thereafter his engagement came to an end.
8. The opposite party has further asserted that engagement of the petitioner on daily wage basis was wholly and solely on the basis of availability of the work. Initially his work and conduct was found satisfactory and recommended for regularization alongwith other employees and the petitioner was junior amongst the candidates recommended for consideration for regularization of service.
9. It has further been stated by the management that the petitioner workman started losing interest in his official duties allocated to him, moreover he mis-used the management's money, and often he misused the name of ARM and was caught on several occasions introducing himself as Asstt. Regional Manager. It has also been alleged that the petitioner took money in the form of loan from the suppliers for his personal use, which caused disrepute to the department. He was caught, quite often dozing and napping while on duty, several blank signed bills were handed over to the suppliers by him which caused loss to the management, amounting to Rs.2 lakhs. Misuse of official telephone and mobile phone has also been alleged by the management. Fraudulent purchase of cash card for his personal use and attempt to cheat the management has also been pleaded in the written statement.
10. The opposite party has contended that although being warned on several occasions by the competent authority, the conduct of the petitioner did not improve. An opportunity was provided to him to amend himself and he was transferred from the Regional Office, Lucknow to Mankapur Store but even then he did not improve his work and conduct, instead of joining at the new place he with the help of his father-in-law, and wife and other relatives started threatening the management authorities. Regreting his misconduct and misbehaviour etc. letter dated 27.05.2002 was sent by him to the Regional Manager, Kendriya Bhandar, Lucknow. The opposite party has further stated that the petitioner had lost his good sense, physical health and mental balance due to some internal family matters etc. The work and conduct of the petitioner was not found satisfactory up to the mark, compelling thereby to the management to refrain from taking any work from him. Since he was engaged on daily wage basis therefore no appointment letter was ever issued to him hence there was no requirement to provide any termination letter as well.
11. The opposite party has emphasized that the provisions of I.D. Act. are not applicable to the case of the petitioner. Prouncements of Hon'ble Apex Court have also been mentioned in the written statement. With the aforesaid pleadings request has been made to declare the action of the management as legal and justified. Several documents have been annexed as per list M-25.

12. With strong denial of the allegations leveled in the written statement, rejoinder W-22 dated 9/03/2006, alongwith an affidavit has been filed by the workman reiterating the pleas taken earlier in the claim statement.
13. It may be quite pertinent to mention here that the referred dispute, has been adjudicated ex-parte against the petitioner workman, by the then Hon'ble Judge/Presiding Officer, vide award dated 14.11.2008 and notified on 25.11.2008. Later on the aforesaid award was set aside and restored to its original stage vide order dated 20.10.2010 passed by the then Hon'ble Judge/PO.
14. The petitioner workman filed his affidavit W-40, in evidence, he was thoroughly cross-examined on behalf of the management.
15. Before ex-parte adjudication, the management has filed affidavit M-38 dated 20.10.2008 of Sri Manoj Kumar Gupta, Regional Manager, Kendriya Bhandar, Lucknow, alongwith annexures. It is evident from the record that after conclusion of the workman-evidence, the opposite party/management was required to adduce its evidence. Several dates were fixed for this purpose from 09.09.2013 to 11.05.2015 but neither any evidence was adduced nor earlier witness Sri M.K. Gupta, was produced in the Court for his cross examination. Under these circumstances, opportunity of further management evidence was closed and the case was fixed for final arguments. Again 30 dates were given for the purpose, but the opposite party refrained itself from submitting arguments before the Court. Neither any official of the management nor any Authorized Representative appeared in the Court to advance arguments. The case can not be endlessly lingered on without any legitimate genuine reason.
16. Arguments of learned AR for the workman have been heard at length. Record has been scanned thoroughly.
17. It has been submitted on behalf of the workman that he was engaged as Clerk-cum-Typist on daily wage basis by the opposite party w.e.f. 15.06.1997 and had worked continuously as such till 12.06.2002 without any show-cause notice or notice-pay in lieu thereof, his services were terminated, in violation of the provisions of the I.D. Act. and against the principle of natural justice. It has further been alleged that several other employees junior to him have been regularized by the management, but the petitioner was dis-engaged without any formal departmental enquiry or genuine justification, although he had worked for more than 240 days in the preceeding 12 calander months on the date of the aforesaid termination.
18. Learned AR for the workman has relied upon the following citations:
 1. 2018, LLR, Kurushetra University vs Prithvi Singh page 371, Hon'ble SC.
 2. 2018, LLR, Vinod Singh Yadav vs M/s. Securitans India Pvt. Ltd. page 375, Hon'ble Delhi High Court.
19. The Written Statement submitted by the management, has not been duly corroborate by any cogent evidence. The affidavit filed by the management in support of its Written Statement, can not be legally and legitimately relied upon by this Court since the workman could not get any opportunity to cross-examine the management witness, who was never again produced in the Court by the management. Moreover, no other evidence was adduced by the management, although sufficient opportunity was provided.
20. For the so called mis-behaviour of the workman or the alleged mis-representation made by him, whether any formal enquiry was conducted by the management, has not been brought on record, neither any FIR was lodged by the management for the alleged cheating. Mere averments in the written statement can not be treated as conclusive proof.
21. Therefore, in view of the law laid down by Hon'ble Apex Court in (2006) 3 SCC 278 State of U.P. Vs Sheo Shanker Lal Srivastava & others; the statement of the witness, having not been controverted would be deemed to be admitted, there is no reason to disbelieve the statement of workman.
22. After having heard the intellect arguments advanced by the learned AR for the workman, on perusal of the record in the light of the prouncements of Hon'ble Courts referred here in above, it is inferred that the action of the management for disengagement of the petitioner workman w.e.f. 12.06.2002, can not be treated as legal and justified. The petitioner workman is entitled for reinstatement and regularization, as per Rules. The management is directed to ensure payment of 50% of the back wages with con- sequential benefits to the petitioner workman within 10 weeks from the date of notification of the award.
23. Award as above.

LUCKNOW
14.06.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1188.—राष्ट्रपति, श्री अवतार चन्द डोगरा पीठासीन अधिकारी, केन्द्र सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय सं. 1, दिल्ली को दिनांक 07.08.2018 से छः माह की आगे की अवधि तक अथवा नियमित आधार पर पद भरे जाने तक अथवा अगले आदेशों तक, जो भी पहले हो, पीठासीन अधिकारी, केन्द्र सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय सं. 1 एवं 2, चंडीगढ़ के पद का अतिरिक्त प्रभार सौंपते हैं।

[सं. ए -11016/04/2017-सीएलएस-II]

अजय मलिक, अवर सचिव

New Delhi, the 2nd August, 2018

S.O. 1188.—The President is pleased to extend the period of additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Courts No. 1 & 2, Chandigarh entrusted to Shri Avtar Chand Dogra, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi for a further period of 06 months with effect from 07.08.2018, or till the posts are filled up on regular basis, or until further orders, whichever is the earliest.

[No. A-11016/04/2017-CLS-II]

AJAY MALIK, Under Secy.

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1189.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 24/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-30012/74/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2010) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 01.08.2018.

[No. L-30012/74/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd July, 2018

Reference: (CGITA) No. 24/2010

The General Manager/Surface Manager,
ONGC Ltd.,
KDM Bhavan, Palavasna,
Mehsana (Gujarat)

...First Party

V/s

The General Secretary,
General Mazdoor Sangh,

B/331, Punitnagar,
Nr. Cadila Railway Crossing, Ghodasar,
Ahmedabad (Gujarat)

...Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri Yogesh M. Dave

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/74/2008—IR(M) dated 17.04.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC, Mehsana in terminating the services of Shri B.B. Patel, Ex. TA Gr. II (Chem.) is just and legal? What relief the workman is entitled to?”

1. The reference dates back to 17.04.2009. After issuing notice Ex. 3 to all the parties, the first party submitted the vakalatpatra Ex. 5 of Shri K.V. Gadhia on 19.03.2012 and the second party submitted the statement of claim Ex. 7 on 19.12.2016 along with vakalatpatra of Shri Yogesh M. Dave. The first party submitted the written statement Ex. 8 on 20.11.2017 and the case was fixed for evidence of second party. But since then the second party has not been leading evidence and the second party workman has alleged in his statement of claim that he was working as TA Grade II (Chem.) as a permanent employee and he was charge sheeted for unauthorised long absence. The written statement Ex. 8 indicates that he was absent from duty for more than 851 days. Thus in the light of the aforesaid observations, the workman has simply dragging the reference as a waste of time of the tribunal.

2. Thus the reference, in the absence of the evidence of the second party union or its workman, is disposed of with the observation as under: “the action of the management of ONGC, Mehsana in terminating the services of Shri B.B. Patel, Ex. TA Gr. II (Chem.) can be said to be just and legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. जेड-16025/4/2018-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2012) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 01.08.2018.

[No. Z-16025/4/2018-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 9th July, 2018

Reference: (CGITA) No. 01/2018

Brijeshkumar Hariprakash Shukla,
At & Post Block No. 398/2233,
Shivshakti Nagar, G.H.B., Chandkheda,
Ahmedabad (Gujarat)

...Complainant/Applicant

V/s

1. The Manager,
ONGC Ltd.,
Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat)
2. The General Manager,
ONGC Ltd. (W.S.S.),
Village Saij, Ta. Kalol,
Gandhinagar (Gujarat)
3. The Manager,
M/s Vijay Security Services,
33, Patel Chambers, 1st Floor,
Highway Road, Bapunagar,
Ahmedabad (Gujarat)

...Respondents/Opposite Party

For the Complainant : Shri K.K.Rathod

For the Respondent : Shri K.V. Gadhia

ORDER

1. This is a complaint Ex. 1 moved by the complainant Brijeshkumar Hariprakash Shukla under Section 33 A of Industrial Disputes Act for reinstatement with back wages from the date of termination with all benefits as per Central Labour Rules and Regulations alleging that he has been working as W.S.S. in ONGC Ltd. (W.S.S.), Village Saij, Ta. Kalol, Gandhinagar, since 1994 as Accounts Clerk and his salary was as per ONGC rules. He served his duties honestly and regularly. ONGC Officers used to take his attendance. Despite no notice or departmental enquiry, ONGC and contractor terminated his service on 26.07.2005, therefore, he has prayed for aforesaid reliefs.

2. The respondents no. 1, 2 and 3 The Manager, ONGC Ltd., Avani Bhavan, Chandkheda, Ahmedabad (Gujarat), The General Manager, ONGC Ltd. (W.S.S.), Village Saij, Ta. Kalol, Gandhinagar (Gujarat) and The Manager, M/s Vijay Security Services, 33, Patel Chambers, 1st Floor, Highway Road, Bapunagar, Ahmedabad (Gujarat) respectively, were issued notice. In response to the notice, the respondents no. 1 and 2 submitted the written statement Ex. 8 alleging that the workman/applicant was a contractual employee under the opposite party/respondent no. 3 M/s Vijay Security Services. There was no master servant relationship with the ONGC. The workman/applicant himself has admitted that he was employed by the contractor; therefore, he cannot be reinstated by ONGC.

3. The opposite party no. 3 The Manager, M/s Vijay Security Services, 33, Patel Chambers, 1st Floor, Highway Road, Bapunagar, Ahmedabad (Gujarat) has not filed the reply as the notices served to him were received as unserved. Therefore, in the absence of the reply and evidence of the opposite party no. 3 M/s Vijay Security Services as the applicant has reiterated the averments made in the application in his affidavit Ex. 11, the complaint may be disposed of as ex-parte against the opposite party no. 3 ordering the reinstatement of the applicant/complainant Brijeshkumar Hariprakash Shukla in the service of the opposite party no. 3 M/s Vijay Security Services from the date he report for duty.

4. In the absence of the master servant relationship, no relief can be granted against the opposite party no. 1 and 2.

5. The order is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स काण्डला डॉक लेबर बोर्ड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 38/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-37011/1/2002-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kandla Dock Labour Board and other and their workman, which was received by the Central Government on 01.08.2018.

[No. L-37011/1/2002-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th July, 2018

Reference: (CGITA) No. 38/2006

1. The Vice President,
Kandla Stevedores Association Limited,
10, Seva Sadan-I, New Kandla,
Kutch (Gujarat) – 370210
2. The Deputy Chairman,
Kandla Dock Labour Board,
Shram Deep, Kandla Port,
Kutch (Gujarat) – 370210

...First Party

V/s

The President,
Kandla Port & Dock SC/ST Employees' Union,
S.G.X. 36-37, Adipur,
Kutch (Gujarat) – 370205

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/1/2002–IR(M) dated 24.03.2006 referred the dispute for adjudication to the Central Govt. Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand made by Kandla Port & Dock SC/ST Employees' Union for employment of 328 NOC workers by the Kandla Stevedores Association Limited in the Kandla Dock Labour Board at par with the 240 NOC workers already engaged is legal and justified? If so, what relief the workmen concerned are entitled to?”

1. The reference dates back to 24.03.2006 and received on 01.04.2006 from Ministry of Labour and Employment, New Delhi for adjudication. The second party submitted the statement of claim Ex. 15 alleging that the first party employer has been engaging workers for loading and unloading on the Ships/Steamers which are permanently coming and going to various countries. The Kandla Stevedores Association Limited, has employed 328 NOC workers in the employment for taking work from them in Kandla Port. Since long, more than 240 NOC workers were already engaged through legal process by Kandla Port and it has to allow further 328 NOC worker to continue to work on Kandla Dock Labour Board. These 328 NOC workers worked for more than 340/240 days in each calendar year. Therefore, it has been prayed that all the workers be considered at par with the 240 NOC workers already engaged and they also be paid wages.
2. The first party submitted the written statement Ex. 21 alleging that the reference is time barred and bad in law. There was no master servant relationship between the workmen and the first party management, therefore, no relief can be granted. The reference is too old as referred to the Tribunal on 24.03.2006 but since the filing of written statement on

10.12.2015, the second party has not led evidence despite giving dozens of opportunities. It is also noteworthy that the Tribunal passed an order on 05.01.2017 that no further opportunity shall be granted but even then after giving dates on 16.02.2017, 17.04.2017, 01.08.2017, 12.09.2017, 14.11.2017, 12.12.2017, 13.02.2018, 10.04.2018 and today on 17.07.2018, the second party union did not come forward to lead evidence.

3. Thus it appears that the second party union or its workmen are not willing to prosecute the reference.

4. Thus the reference is disposed of in the absence of the evidence of the second party union or its workmen with the observation as under: “the demand made by Kandla Port & Dock SC/ST Employees’ Union for employment of 328 NOC workers by the Kandla Stevedores Association Limited in the Kandla Dock Labour Board at par with the 240 NOC workers already engaged is illegal and unjustified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 147/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-30011/54/2005-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 01.08.2018.

[No. L-30011/54/2005-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th July, 2018

Reference: (CGITA) No. 147/2006

1. The Chairman,
ONGC Ltd., Tel Bhavan,
Dehradun (Uttarakhand)
2. The Asset Manager,
ONGC Ltd.,
5th Floor, AvaniBhawan, Chandkheda,
Ahmedabad (Gujarat)

...First Party

V/s

Shri Naresh I. Parmar and 11 others,
Through
The General Secretary,
Kamdar Utkarsh Parishad, Ratilal-ni-Chali, Behind Kalyan,
Mahavir Nagar, Naroda Road,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri A.N. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/54/2005–IR(M) dated 12.07.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the contract awarded by the management of ONGC Ltd., in the name of M/s Modern Multi Purpose Co-operative Society Ltd., was sham and bogus contract and whether the Industrial Dispute raised by the workmen vide their representation dated 04.08.2005 against the management of ONGC justified? If so, to what relief the workmen are entitled?”

1. The reference dates back to 12.07.2006 and received on 07.08.2006 from Ministry of Labour and Employment, New Delhi for adjudication. After issuing notice to both the parties, the second party union submitted the statement of claim Ex. 6. Initially the dispute was raised by Kamdar Utkarsh Parishad but the workers were represented by Gujarat Mazdoor Sabha, hereinafter referred to as “union”. The statement of claim reveals that the workers were appointed by the first party The Chairman, ONGC Ltd., Tel Bhavan, Dehradun (Uttarakhand) and The Asset Manager, ONGC Ltd., 5th Floor, AvaniBhawan, Chandkheda, Ahmedabad (Gujarat), hereinafter referred to as “ONGC” in its reservoir sub-division of Exploration Business Group. Their services were terminated orally on 05.09.1988 by ONGC on the ground of contract being expired on 15.08.1988. The second party further alleged that the workmen were appointed by the first party as contingent labour on permanent basis in pursuance of a personal interview being taken by the officers of ONGC. Thereafter, they were asked to work in Exploration Business Group. They have further alleged that the work which they used to perform was of permanent nature and they were performing the said work continuously from the date of their appointment. It is further alleged that one of the workmen Y.A. Kadri was working as Winch Operator and others as helpers and these workmen used to perform their duties on Winch machine under the senior officers of ONGC. They have further alleged that they have continuously worked till 05.09.1988. Thereafter, the first party ONGC refused to continue their services. It is further alleged that in view of the illegal action of the first party, the second party workmen filed a Special Civil Application (SCA) No. 5893/1988 in the Hon’ble High Court of Gujarat wherein the Hon’ble High Court granted interim relief and directed on 05.09.1988 to the contractor Bansidhar Majoor Kamdar Sahakari Mandli Limited to maintain status quo. But the contractor did not obey the order of the Hon’ble High Court and demanded Rs. 500/- as donation from each petitioner. They have further alleged that on demand of Rs. 500/- by the contractor, they again filed a fresh SCA No. 7200/1988 in the Hon’ble High Court of Gujarat wherein the Hon’ble High Court stopped the contractor Bansidhar Majoor Kamdar Sahakari Mandli Limited not to demand Rs. 500/- as donation. The Hon’ble High Court further directed not to enter into any contract on the expiry of contract on 15.11.1988 with any other contractor unless the new contractor agrees to give the workmen to be engaged. The said order was challenged by the first party ONGC before the Hon’ble Supreme Court vide S&P No. 16576/1988 which ended into dismissal by the Hon’ble Supreme Court. It is further alleged that despite the High Court’s aforesaid orders, the contractors and ONGC did not prefer to engage the workmen despite continuity of the work. The first party ONGC created a camouflage with a view to deny the employment by creating fresh paper arrangement. It is further alleged that the union raised the dispute of regularisation which was numbered as Reference (ITC) No. 101/1999 which was dismissed by the State Tribunal on the ground that the services of the workmen were terminated on 05.09.1988, therefore, the order of regularisation cannot be passed as per the settled law. Against the said action, the second party union approached the Hon’ble High Court vide SCA No. 9334/2004 but the same was dismissed by the Hon’ble High Court keeping the right of the second party to challenge the termination order open. The second party union has further alleged that the workmen worked for more than 240 days; hence, they were entitled for the protection given under the Industrial Disputes Act. The second party union further alleged that it was the case of the union before the State Tribunal that the second party workmen were employees of Modern Multipurpose Labour Co-operative Society since February, 1988; therefore, the action of ONGC was contrary to the provisions of Section 25 F, G, H and N of the Industrial Disputes Act. It is further alleged that the workmen initially were working under ONGC and subsequently, their engagement were transferred to the contractor, thus the said action of ONGC was violative of Section 9 A of the Industrial Disputes Act. They have further alleged that the services of the second party workmen were terminated with a view to deprive their right of regularisation. It is noteworthy that the Government of India has prohibited the contract system for the post of Operator and Helper in the year 1994, thus the action of the ONGC amounted to be unfair labour practice. In the light of the aforesaid averments, the second party has prayed for their reinstatement on their original post with continuity of their service with full benefits treating them as regular employees of ONGC.

2. The first party ONGC submitted joint written statement Ex. 8 denying the averments made in the statement of claim submitting that the reference is vague, barred by delay and laches and also barred by non-joinder and mis-joinder of the necessary parties. The ONGC also submitted that the reference has been moved for the first time in the year 2006 into the matter while the termination of workmen was done in the year 1988, hence after expiry of 18 years and as per the settled law, the workmen cannot prayed for reinstatement. It is further submitted that at the relevant time, the workmen

were working with the contractor and were also terminated by the contractor; therefore, the question does not arise to call them as workers of ONGC. It is further submitted that the workers were not engaged, deployed or supervised by ONGC; therefore, master servant relationship does not exist between them. It is further submitted that ONGC has its rules and procedures regarding the recruitment of the employees which is not proved to be followed, therefore, reinstatement, if ordered, would amount to back door entry and also against the settled principle of law. It is further submitted that the workmen were not working under prohibit category and there was a contract between ONGC and contractor registered under Section 7 of CLRA Act, 1970 for which the contractor obtained the licence under Section 12 of the aforesaid act. Thus the reference has no force and liable to be dismissed and no relief can be granted.

3. The second party union submitted the documentary evidences vide Ex. 9 and 12 and examined workmen vide Ex. 10, 13 to 23 and the first party submitted documents vide Ex. 25 and also examined the witness vide Ex. 28.

4. On the basis of the pleadings of the parties, the following issues are to be decided:

- I. Whether the contract awarded by the management of ONGC Ltd., in the name of M/s Modern Multi-Purpose Co-operative Society Ltd., was sham and bogus contract?
- II. Whether the industrial dispute raised by the workmen vides their representation dated 04.08.2005 against the management of ONGC justified?
- III. To what relief, if any, the workmen are entitled?

5. **Issue No. I, II & III:** All the issues are interrelated, therefore, decided together. The burden of prove of these issues was lying on the second party union. The second party union examined their witness vide affidavit Ex. 10 and Ex. 13 to 23. All the witnesses reiterated the averments made in the statement of claim Ex.6. They were cross-examined by the first party and they reiterated that they were not appointed and supervised by the contractor and they have also worked for more than 240 days in each calendar year. What also appears from the cross-examination is that all the workmen were having different educational qualifications and were not issued any appointment letter by ONGC. After termination, they are doing some remunerative work and also they have crossed the superannuation age. They do not have any proof with them regarding their employment directly under the supervision of ONGC with a master servant relationship. They have also admitted that they have been paid wages on the daily wage basis. From the pleadings and evidences, undisputed facts emerged out that all the workmen were terminated in 1988 and cause of action arose immediate thereafter but the present dispute was raised in the year 2004 and 2005 before the Labour Enforcement. It is true that there were litigation pending between them before various forums like High Court but the dispute regarding the termination was never referred or adjudicated while it is the duty of the second party to remain cautious and vigilant regarding their case. The second party union earlier approached the Hon'ble High Court who diverted the matter to seek relief from the Industrial Tribunal. Thus delay has been caused due to the mistake of the second party union.

6. Secondly, as per the documents relating to Reference (ITC) No. 101/1999 produced by the second party, it appears that all the workmen joined the employment in 1986 and 1987 with a tenure of only 15 months and after reference of this dispute, the statement of claim was filed in the year in 2008 that too after delay of 2 years when the matter is referred to this tribunal in the year 2006. Thirdly, the case of the second party union is that the workmen were terminated after completion of contract but the Hon'ble High Court directed the contractor to maintain status quo and after grant of status quo, contractor did not prefer to reinstate them and tried to exhort Rs.500/- per person for moving SCA in High Court for seeking relief against ONGC. It appears that the contractor and workmen's union were in collusion. It is also noteworthy that the second party workmen were terminated by the contractor but they preferred to seek relief declaring termination illegal and to treat them as employees of ONGC. In terms of the reference, the Tribunal has to decide as to whether the contract was sham or bogus or not, for that, contractor ought to be necessary and proper party.

7. As discussed above, the second party union is praying for reinstatement with regularisation on the ground that they were doing work of permanent nature and were supervised by ONGC and it was their case that the contractor was a formality. It is noteworthy that the workmen were terminated in the year 1988 against which they approached the Hon'ble High Court and Hon'ble High Court granted status quo till the disposal of the petition but it is surprising that the contractor instead of reinstating them, tried to exhort Rs.500/- as donation. The union again approached the Hon'ble High Court against the said contractor's conduct and the Hon'ble High Court restrained the contractor to do so. Thus it clearly establishes that the workmen were the employees of the contractor.

8. The second party workers in their evidence stated that personal interview/personality test were conducted by ONGC prior to their appointment but no such interview call letters or appointment letters are submitted by the second party union. No evidence regarding advertisement of vacancies, non-employee I-Card, temporary pass, office order of collecting the keys is filed. Thus the workmen's union has failed to establish that the work was of permanent nature and the workmen were supervised and controlled by ONGC.

9. All the workmen examined vide affidavits Ex. 10 and Ex. 13 to 23 and they admitted that they were not given any appointment letter by ONGC. They were paid by the contractor on daily wage basis. They were gainfully employed to

sustain their families and also worked under the contractor named Modern Multipurpose Society and Bansidhar Majoor Kamdar Sahakari Mandli Limited. All the witnesses have also admitted regarding the Hon'ble High Court proceedings as discussed earlier but the second party union did not prefer to submit those orders passed by the Hon'ble High Court. All these witnesses have not submitted their passbooks of the banks regarding their crediting of wages despite promising to submit. They have also different age and qualification and all have passed the superannuation age as admitted by the advocate of the second party while submitting his arguments. They have also admitted that they were engaged and also terminated by the contractor. They have also not submitted any proof which may establish to work for more than 240 days in any calendar year.

10. The first party ONGC vide list Ex. 25 submitted the copies of the licences of the contractors, agreement, registration of the contractor to establish the worthiness of the contractor between the ONGC and the concerned contractor.

11. The first party has relied upon the depositions of the workmen examined in Reference (ITC) No. 101/1999 wherein it is stated that there are rules and regulations for appointment in ONGC and appointment are always made as per the rules. Names of probable candidates are called from Employment Exchange and then after checking the details, call letters are issued, test is taken and interviews are conducted, thereafter the merit list is prepared for issuing appointment letters to the successful candidates. The medical examination was also done and after passing the medical examination, they were permitted to join and proper identity cards are issued. But no such appointment letter was issued to any of these workmen. It was also deposed that all the persons were appointed by ONGC and were terminated by one Mr. Gupta. It was also denied that the workers have been working as per the instructions of ONGC. But the workmen did not tried to rebut the entire procedure as explained above.

12. At the time of the argument, the second party advocate submitted that the concerned workmen were appointed and terminated by ONGC but looking to the affidavits filed by the workmen, it has not been explained by them in their deposition. It is also noteworthy that the concerned workmen approached the Tribunal vide Reference (ITC) No. 101/1999 and after hearing both the parties, the Tribunal deciding the reference on merits, rejecting the relief sought by the workmen and also dismissed the reference. The second party union approached the Hon'ble High Court against the said order and the matter was relegated to this Tribunal for adjudication.

13. As per the submissions of the second party workmen, they have worked for a short spam of period in the year 1987 and 1988 as daily rated workmen and they all have crossed the superannuation age. It is also not under dispute that their services were terminated by the contractor and the contractor has not been impleaded as the necessary party.

14. The second party union's advocate Shri Amrish Patel stated that the Evidence Act is not applicable in the cases under Industrial Disputes Act belying the fact that the zerox copies of the documents produced by the second party union are very much admissible in evidence. He has also submitted that the workmen were earlier engaged by ONGC and later their services were transferred to the contractor which is a change in service condition, hence the action of ONGC was violative of provisions of Section 9 A of Industrial Disputes Act and ONGC did not issue any notice under aforesaid section before transferring the workmen from ONGC to contractor. But no such evidence has been produced as when these workmen were recruited by the ONGC as per the procedure discussed earlier.

15. The first party the ONGC has relied upon several judgments in support of its submissions which are as under:

- I. The Hon'ble Supreme Court in a case of Vice Chancellor, Lucknow University, Lucknow V/s Akhilesh Kumar Khare & others, 2015 III CLR 464, held that the Courts cannot issue any direction for absorption / regularization of temporary, contractual, casual, daily wage or ad-hoc employees.
- II. The Hon'ble Supreme Court in case of Account Officer (A&I) APSRTC & Ors. V/s K.V. Ramana & Ors., 2007 LLR 338, held that contractual workers who have completed 240 days without any break cannot be regularized dehors the rules of selection as they had not undergone the departmental selection process.
- III. The Hon'ble Supreme Court in a landmark judgment of Dena Nath and Ors., 1992 (64) FLR 39, held that the CLRA Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. Non compliance of the provisions only exposes to prosecution but the contract labour employee does not become direct employees of principal employer.
- IV. The Hon'ble Supreme Court in case of Steel Authority of India Ltd. and Ors., 2001 (2) SCSLJ=2001 LLR 961 also laid down a ratio which is reproduced as under:

“Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by Appropriate Government under sub section (1) of Section 10, prohibiting employment of contract labour, in any process, or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.”

- V. In case of Union of India & Anr. V/s Ramsingh Thakor & Ors., 2012 AIR SCW 3806, the Apex Court held that regularization of services is an executive function and such direction cannot be given by the Judiciary.
- VI. Hon'ble Apex Court in case of Balvant Rai Saluja & Anr. V/s Air India Ltd. & Ors., 2014 III CLR 751, held that contractual workers working in statutory canteen as per the Factories Act who are under certain degree of control of the Principal Employer also cannot claim regularization as there is no parity in the nature of work, mode of appointment, qualification etc. between regular employees of the partly employer and concerned persons.
- VII. The Division Bench of Hon'ble High Court of Gujarat in LPA No. 530 in case of Jhon Peter Farnandiz also held that as per the position of law settled by the Hon'ble Apex Court in various judgments contractual workers have not undergone the selection process and therefore they cannot claim regularization.
- VIII. The Hon'ble Division Bench of Gujarat High Court in Hadvad Nagar Palika held that compliance of Section 25 F is also not required in case of daily wages.
- IX. The Hon'ble High Court of Gujarat in LPA No. 2038/2004 in case of Shukla M.P. V/s Municipal Commissioner, held that once the concerned person has not followed the selection process, he cannot be entitled for regularization.
- X. In case of latest judgment of Gujarat high court in case of ONGC itself of Shri Chetan Kumar Patel and Others, 2016 III CLR Page 106, had prayed for regularization with ONGC. The Hon'ble High Court has after considering the judgment of Constitution Bench of Umadevi, 2006 II CLR 261, Indian Drugs Pharmaceuticals, Kendriya Vidya Sangathan, U.P. State Electricity Board, Official Liquidator V/s Dayanand etc. held that
 - If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.
 - Merely because a temporary employee or a casual wage worker is continued for a time being beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength on such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.
 - Regularisation is not a mode of appointment.
 - The Government or the instrumentality of the State cannot regularize the appointment made contrary to the course of selection as envisaged by the relevant rules governing the posts.
 - The High Court acting under Article 226 of the Constitution of India should not issue directions for regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.
 - There should be no further by-passing of the constitutional requirement and regularization or making permanent those not duly appointed as per the constitutional scheme. [vide Shilpa Jinda (supra)]
- XI. The Hon'ble Apex Court after the constitution bench judgment in Umadevi held in 2010 in case of State of Karnataka & Ors. V/s Gadilingappa and Ors. that any judgment / direction contrary to the directions given in Umadevi's case [2006(4) SCC 1] shall not have a precedent status.
- XII. The Hon'ble Allahabad High Court in case of M/s. NTPC Ltd., 2015 (144) FLR 248, held that Contractor is a necessary party and any reference cannot stand unless the contractor is impleaded.
- XIII. In case of latest judgment delivered by the Hon'ble Apex Court in case of Upendra Singh V/s State of Bihar & Ors., 2018 I CLR 1043, considering the landmark judgment of Umadevi, held that unless the entry is made duly accepted procedure of public advertisement, selection of employees as per norms fixed and against the sanctioned posts etc one is not entitled to get the relief of regularization in service.

16. The second party advocate relied on ONGC V/s Petroleum Coal Labour Union, 2015 (6)SC C 494, wherein the apex court held that the workmen cannot be denied their legitimate, statutory and fundamental right to be regularised on the basis that ONGC did not follow the due procedure as provided under the Clause 2 (2) of the ONGC Certified Standing Orders appointing them as temporary workmen and continuing them as such for a number of periods though they were entitled for regularisation under aforesaid order would amounts to unfair labour practice. He has further relied upon workmen of FCI V/s FCI, AIR 1985 SC 670, wherein it has been held that FCI applied different procedures for engagement at different establishment and abolition of contract system without issuing notice with a cancellation of direct payment system and re-introducing contract system is punishable under Section 31 (2) of Industrial Disputes Act. He has further relief on State of Uttar Pradesh V/s Om Pal Singh, 2006 SLP (C) 5189, wherein the apex court has held as

under: “The engagement of the first respondent was for only a particular project cannot be appreciated at all. We therefore do not find any ground to interfere with the well-reasoned award passed by the Industrial Tribunal and as endorsed by the High Court. However, we do not find it proper in the facts of the case to sustain the award of back wages in the facts of the present case. Therefore, the award is modified only to the extent that the first respondent shall not be entitled for back wages for the period he was not actually in service and for all other purposes his services shall be treated as continuous.”

17. In the light of the aforesaid discussions, it is an admitted fact that all the workmen were engaged by the contractor and have also passed the superannuation age and the dispute has been raised after 18 years, therefore, it is not equitable to reinstate them with back wages and other benefits, however, it would be appropriate to pay Rs. 150000/- (Rupees One Lac Fifty Thousand) as lump-sum to each workman.

18. Thus the reference is decided accordingly. The first party ONGC is directed to pay the aforesaid amount to all the workmen concerning this reference within 60 days from the publication of the award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 09/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-30011/39/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2016) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 01.08.2018.

[No. L-30011/39/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th July, 2018

Reference: (CGITA) No. 09/2016

1. The Executive Director – Asset Manager,
ONGC Ltd., Avani Bhavan, 5th Floor, Chandkheda,
Ahmedabad (Gujarat)
2. The Incharge (HR - IR),
ONGC Ltd., Avani Bhavan, 5th Floor, Chandkheda,
Ahmedabad (Gujarat)
3. The Dy. General Manager (P) ST,
ONGC Ltd., Avani Bhavan, 5th Floor, Chandkheda,
Sabarmati, Ahmedabad
4. M/s D.B. Enterprises,
G-8, Sukan Mall, Behind Vishat Petrol Pump,
Sabarmati, Ahmedabad (Gujarat)

...First Party

V/s

The President,
Glorious Petroleum MazdoorSangh,
A/3, PriyaDarshini Society,Near New Railway Colony,
Ahmedabad (Gujarat) – 380019

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/39/2015–IR(M) dated 15.01.2016 referred the dispute for adjudication to the Central Govt. Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ahmedabad through its contractor M/s D.B. Enterprises, Ahmedabad in discontinuing/terminating the services of two workmen Shri Mangaji J. Yadav w.e.f. 28.04.2015 without following the procedure prescribed under Section 33 of the I.D. Act, 1947 during the pendency of his claim for regularization in services of ONGC Ltd., before CGIT, Ahmedabad and Shri Pradipkumar S. Nai without following the procedure prescribed under ‘Fair Wage Settlement’ is legal, proper and justified? If not, to what relief the concerned workmen S/Shri Mangaji J. Yadav and Pradipkumar S. Nai are entitled to and what directions are necessary in the matter?”

1. The reference dates back to 15.01.2016 and received on 23.01.2016 from Ministry of Labour and Employment, New Delhi for adjudication. The first party ONGC has submitted a copy of the award Ex. 6 passed in Reference (CGITA) No. 11/2016 which was disposed of on 21.11.2017 directing the contractor M/s D.B. Enterprise to engage/employ the workman namely Mangaji J. Yadav and Pradipkumar S. Nai immediately as and when they report for duty.
2. The schedule of the reference in the present reference is completely same and details of the letter of the reference are also same.
3. Thus this reference amounts to be duplicity of the dispute. Thus this reference is not maintainable being repetition of the earlier reference.
4. Thus no final award is required and the reference is disposed of accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 242/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-30011/36/1999-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 242/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workmen, which was received by the Central Government on 01.08.2018.

[No. L-30011/36/1999-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 3rd July, 2018

Reference: (CGITA) No. 242/2004

The Group General Manager (P),
ONGC Ltd.,
Ahmedabad Project, Avani Bhawan,
Ahmedabad (Gujarat) – 380005

...First Party

V/s

The General Secretary,
General Mazdoor Sabha,
Divetia Blocks, Raikhad,
Ahmedabad (Gujarat)

...Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri Raghuvir Mali

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/36/99–IR(M) dated 17.11.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of General Mazdoor Sabha that the so called contract under which the employees Shri Zala Govindbhai Mangalsinh and 21 others in the various department of ONGC Ahmedabad Project ‘sham’ and ‘bogus’ arrangement and the concerned employees be treated in direct employment in ONGC Ahmedabad Project from their date of engagement with all consequential benefits through the so called contractors is legal and justified? If so, to what relief the concerned workmen are entitled and from which date?”

1. The reference dates back to 17.11.1999. The second party submitted the statement of claim Ex. 5 on 15.03.2000 alleging that the second party union The General Secretary, General Mazdoor Sabha, Divetia Blocks, Raikhad, Ahmedabad, hereinafter referred to as “union”, has right to raise the dispute concerning the workmen who are members of the union. The union is active in trade union activities with the first party The Group General Manager (P), ONGC Ltd., Ahmedabad Project, Avani Bhawan, Chandkheda, Ahmedabad, hereinafter referred to as “ONGC”. The second party union sent a notice dated 12.12.1998 to the first party regarding making the workmen as permanent employees along with other benefits like basic salary, dearness allowance and annual increment etc. The second party union submitted a representation before the Conciliation Officer where ONGC filed the reply but ONGC did not accept the demands of the union, consequently reconciliation ended in failure. It has been further alleged by the second party that the workmen detailed in the annexure were employed by ONGC. The workmen were performing the duties with the establishment of ONGC permanently and regularly as being of permanent nature. The work performed by the workmen was of a permanent nature therefore, the workmen were entitled for regularisation/permanent. The workmen were never stopped to work or terminated. The workmen were allotted the work by the officers of ONGC under their direct supervision and control. Attendance register of the workmen were also maintained by ONGC. Wages were also paid by ONGC. Their working hours and shifts of work were also regulated by ONGC. The workmen were carried over to the workplace by the ONGC transport. Tools were provided by the ONGC to the workmen. No middle agency was involved between the workmen and ONGC regarding their duties. The contract reached between the ONGC and the contractor, if any, was not existing, therefore, sham and bogus. There was no difference between the work performed by the workmen concerning the reference and the regular employees of ONGC but there was a vast difference between the salaries between the workmen and regular employees of ONGC. The workmen were not provided any presence card, identity card etc. which were always provided to employees. These workmen have been working under the notification dated 08.09.1994. The contract between the ONGC and the contractor was against the CLRA Act. The defence taken by the ONGC during conciliation was untenable. Thus the union has prayed for regularisation of the workmen as a regular employee of ONGC from the initial date of joining with a legal cost of reference.

2. The second party union also moved an interim relief application Ex. 2 along with the statement of claim on the same ground but no order was passed on the said application.
3. The first party ONGC submitted the written statement Ex. 18 denying the averments made in the statement of claim but admitted that the workmen were working under a contract and submitted that the reference is incompetent and void in law and also not maintainable. The reference suffers with delay and laches and the terms of the reference are vague. ONGC used to award various jobs of casual and seasonal nature on contract basis to the contractors so as to get the job done awarded to the contractors within the time frame provided in the contract through engagement of labourers. The ONGC had a recruitment rules, promotion and regularisation policy to be strictly followed by it in the light of the instructions and circulars of the Union of India regarding rosters, reservations policy etc. These second party workmen were never appointed by ONGC as per the procedure provided under the ONGC recruitment rules, therefore, they are not entitled to get any relief and the reference is liable to be dismissed.
4. On the basis of the averments made in the statement of claim and written statements, the following issues arise:
 - I. Whether the demand of General Mazdoor Sabha that the so called contract under which the employees Shri Zala Govindbhai Mangalsinh and 21 others in the various department of ONGC Ahmedabad Project 'sham' and 'bogus' arrangement and the concerned employees be treated in direct employment in ONGC Ahmedabad Project from their date of engagement with all consequential benefits through the so called contractors is legal and justified?
 - II. To what relief, if any, the concerned workmen are entitled?
5. **Issue No. I & II:** Both the issues are interrelated, therefore, are decided together. The burden of proof of these issues was lying on the second party union but the second party union despite giving dozens of opportunities, did not prefer to lead evidence and also submitted the closing purses vide Ex. 61 on 12.02.2018. Thus it is a case of no evidence.
6. The ONGC in his written statement has alleged that the workmen were the contractual employees; therefore, there was no master servant relationship between the ONGC and the workmen. The second party has vaguely alleged that they were not contractual employees but somehow admitted that they were engaged by the contractor but the contractor has not been made the party, therefore, the reference suffers with the non-joinder of contractor in the reference. The second party union has alleged that the workmen have been working under the prohibit category but no such notification as well as the details of the work done by the workmen as alleged to be in the prohibit category, has not been submitted. Secondly, the alleged notification dated 08.09.1994 was stayed by the Hon'ble Andhra Pradesh High Court which has been submitted by the first party.
7. Thus the reference in the light of the judgement of the Hon'ble Allahabad High Court in re NTPC, 2015 (144) FLR 248 and Hon'ble Supreme Court in Yogesh Mahajan v/s Professor R. C. Deka, Director, All India Institute of Medical Science, 2018 (157) FLR 287 SC, has no force and is liable to be dismissed.
8. Thus the reference is disposed of with the observation as under: "the demand of General Mazdoor Sabha that the so called contract under which the employees Shri Zala Govindbhai Mangalsinh and 21 others in the various department of ONGC Ahmedabad Project 'sham' and 'bogus' arrangement and the concerned employees be treated in direct employment in ONGC Ahmedabad Project from their date of engagement with all consequential benefits through the so called contractors is illegal and unjustified."
9. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1195.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 256/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-30011/51/1999-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 256/2004) of the Central Government Industrial Tribunal/Labour

Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workmen, which was received by the Central Government on 01.08.2018.

[No. L-30011/51/1999-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 3rd July, 2018

Reference: (CGITA) No. 256/2004

The Group General Manager (P),
ONGC Ltd.,
Ahmedabad Project,
Avani Bhawan, Chandkheda,
Ahmedabad (Gujarat) – 380005

...First Party

V/s

The General Secretary,
General Mazdoor Sabha,
Divetia Blocks, Raikhad,
Ahmedabad (Gujarat)

...Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri Raghuvir Mali

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/51/99-IR(M) dated 15.12.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of General Mazdoor Sabha that the contract under which the employees Shri Rabari Jayrambhai Cheharbhai and 31 others were engaged in the various department of ONGC be treated as ‘sham and bogus’ and the concerned employees be treated in direct employment in ONGC Ahmedabad Project from their date of engagement with consequential benefits through the so called contractors is justified? If so, to what relief the concerned workmen are entitled?”

1. The reference dates back to 15.12.1999. The second party submitted the statement of claim Ex. 4 on 15.03.2000 alleging that the second party union The General Secretary, General Mazdoor Sabha, Divetia Blocks, Raikhad, Ahmedabad, hereinafter referred to as “union”, has right to raise the dispute concerning the workmen who are members of the union. The union is active in trade union activities with the first party The Group General Manager (P), ONGC Ltd., Ahmedabad Project, Avani Bhawan, Chandkheda, Ahmedabad, hereinafter referred to as “ONGC”. The second party union sent a notice dated 02.02.1999 to the first party regarding making the workmen as permanent employees along with other benefits like basic salary, dearness allowance and annual increment etc. The second party union submitted a representation before the Conciliation Officer where ONGC filed the reply but ONGC did not accept the demands of the union, consequently reconciliation ended in failure. It has been further alleged by the second party that the workmen detailed in the annexure were employed by ONGC. The workmen were performing the duties with the establishment of ONGC permanently and regularly as being of permanent nature. The work performed by the workmen was of a permanent nature therefore, the workmen were entitled for regularisation/permanent. The workmen were never stopped to work or terminated. The workmen were allotted the work by the officers of ONGC under their direct supervision and control. Attendance register of the workmen were also maintained by ONGC. Wages were also paid by ONGC. Their working hours and shifts of work were also regulated by ONGC. The workmen were carried over to the workplace by the ONGC transport. Tools were provided by the ONGC to the workmen. No middle agency was involved between the workmen and ONGC regarding their duties. The contract reached between the ONGC and the contractor, if any, was not existing, therefore, sham and bogus. There was no difference between the work performed by the workmen

concerning the reference and the regular employees of ONGC but there was a vast difference between the salaries between the workmen and regular employees of ONGC. The workmen were not provided any presence card, identity card etc. which were always provided to employees. These workmen have been working under the notification dated 08.09.1994. The contract between the ONGC and the contractor was against the CLRA Act. The defence taken by the ONGC during conciliation was untenable. Thus the union has prayed for regularisation of the workmen as a regular employee of ONGC from the initial date of joining with a legal cost of reference.

2. The second party union also moved an interim relief application Ex. 2 along with the statement of claim on the same ground but no order was passed on the said application.

3. The first party ONGC submitted the written statement Ex. 18 denying the averments made in the statement of claim but admitting that the workmen were working under a contract and submitting that the reference is incompetent and void in law and also not maintainable. The reference suffers with delay and laches and the terms of the reference are vague. ONGC used to award various jobs of casual and seasonal nature on contract basis to the contractors so as to get the job done awarded to the contractors within the time frame provided in the contract through engagement of labourers. The ONGC had a recruitment rules, promotion and regularisation policy to be strictly followed by it in the light of the instructions and circulars of the Union of India regarding rosters, reservations policy etc. These second party workmen were never appointed by ONGC as per the procedure provided under the ONGC recruitment rules, therefore, they are not entitled to get any relief and the reference is liable to be dismissed.

4. On the basis of the averments made in the statement of claim and written statements, the following issues arise:

I. Whether the demand of General Mazdoor Sabha that the contract under which the employees Shri Rabari Jayrambhai Cheharbhai and 31 others were engaged in the various department of ONGC be treated as 'sham and bogus' and the concerned employees be treated in direct employment in ONGC Ahmedabad Project from their date of engagement with consequential benefits through the so called contractors is justified?

II. To what relief, if any, the concerned workmen are entitled?

5. **Issue No. I & II:** Both the issues are interrelated, therefore, are decided together. The burden of proof of these issues was lying on the second party union but the second party union despite giving dozens of opportunities, did not prefer to lead evidence and also submitted the closing purses vide Ex. 62 on 12.02.2018. Thus it is a case of no evidence.

6. The ONGC in his written statement has alleged that the workmen were the contractual employees; therefore, there was no master servant relationship between the ONGC and the workmen. The second party has vaguely alleged that they were not contractual employees but somehow admitted that they were engaged by the contractor but the contractor has not been made the party, therefore, the reference suffers with the non-joinder of contractor in the reference. The second party union has alleged that the workmen have been working under the prohibit category but no such notification as well as the details of the work done by the workmen as alleged to be in the prohibit category, has not been submitted. Secondly, the alleged notification dated 08.09.1994 was stayed by the Hon'ble Andhra Pradesh High Court which has been submitted by the first party.

7. Thus the reference in the light of the judgement of the Hon'ble Allahabad High Court in re NTPC, 2015 (144) FLR 248 and Hon'ble Supreme Court in Yogesh Mahajan v/s Professor R. C. Deka, Director, All India Institute of Medical Science, 2018 (157) FLR 287 SC, has no force and is liable to be dismissed.

8. Thus the reference is disposed of with the observation as under: "the demand of General Mazdoor Sabha that the contract under which the employees Shri Rabari Jayrambhai Cheharbhai and 31 others were engaged in the various department of ONGC be treated as 'sham and bogus' and the concerned employees be treated in direct employment in ONGC Ahmedabad Project from their date of engagement with consequential benefits through the so called contractors is not justified."

9. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन. जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 371/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-30015/3/2001-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 371/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workmen, which was received by the Central Government on 01.08.2018.

[No. L-30015/3/2001-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th July, 2018

Reference: (CGITA) No. 371/2004

The Project Manager,
ONGC Ltd.,
Cambay Project, Kansari, Tal. Cambay,
Anand (Gujarat)

...First Party

V/s

The General Secretary,
Gujarat Mazdoor Panchayat,
Shram Shakti, P.B. No. 77, GPO,
Opp. Prabhat Press, Mirzapur,
Ahmedabad (Gujarat)

...Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri Sanjay Vaghela

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30015/3/2001-IR(M) dated 01.02.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Gujarat Mazdoor Panchayat, Ahmedabad that the contract arrangement under which the workmen Shri Baldevbhai Bhimsinh Parmar and 93 others employed in ONGC Cambay Project is sham and bogus and the category in which they are working is prohibited category of employment vide Notification NO. 779 (c) dated 08.12.1976 and the concerned workmen are entitled to be treated in direct employment in ONGC Ltd., Cambay from the date of their joining along with all benefits at par with permanent employees of ONGC Ltd., is legal and justified? If yes then to what relief the concerned workman are entitled to and from which date?”

1. The reference dates back to 01.02.2001 and was received on 20.02.2001 from Ministry of Labour and Employment, New Delhi for adjudication. Both the parties issued notices by the registered post. In response to the notices, the second party union The General Secretary, Gujarat Mazdoor Panchayat, Shram Shakti, P.B. No. 77, GPO, Opp. Prabhat Press, Mirzapur, Ahmedabad, hereinafter referred to as “Panchayat” submitted the statement of claim Ex. 5 wherein he has alleged that the Panchayat has raised this dispute on behalf of the 94 workmen detailed in the list annexed with the schedule of the reference. These workmen were doing the work of watching the different installations of ONGC since last several years. The appropriate authority under the Contract Labour (Regulation and Abolition) Act, hereinafter referred to as “Act” is the Central Government as the first party ONGC Ltd., hereinafter referred to as “ONGC” and is the Public Sector Undertaking (P.S.U.) of Government of India. The Ministry of Labour & Employment, Government of India vide notification dated 08.12.1976 prohibited the engagement of contract labour w.e.f. 01.03.1977 related to watching in all the establishments/organisations under the control or undertaking of the Government of India but the ONGC continued to employ the workmen related to this reference as contract labour. The judgement of Hon’ble

Supreme Court in *Air India Corporation V/s National Labour Union*, 1997 (1) CLR Page 292 laid down the law wherein the Hon'ble Supreme Court in clear terms has held that once the contract labour engagement is prohibited by the Government by way of a notification under the Act, the workmen employed as contract labour in the prohibited category will automatically stand absorbed as permanent workmen of the principle employer from the date the aforesaid notification took effect. In this case, the notification under the aforesaid Act has taken effect on 01.03.1977, therefore, all the workmen in this reference will stand absorbed as permanent watchman of ONGC w.e.f. 01.03.1977. The second party Panchayat further alleged that the workmen concerned were employed as contract labour after the said notification dated 08.12.1976 came into effect on 01.03.1977, therefore, ONGC ought not to have contract labour for doing the watchman work in its installations after 01.03.1977. The very engagement of contract labour to do the job of watching the installations of ONGC on or after 01.03.1977 was illegal. These workmen had been doing the work of watching in different installations of ONGC and different missionaries even after 01.03.1977. It is further alleged that after conciliation proceedings, the matter came to this tribunal. The ONGC did not say anything in the conciliation proceedings to explain the reasons of engaging contract labour. ONGC has also not produced the registration certificate obtained by it under the Act to engage the workmen in ONGC. The licence issued to the contractor was also not filed. The certificate of registration with the principle employer ONGC and the licence to employ contractor labour were two statutory requirements for engaging the contract labour. It is further alleged that failing to fulfil the statutory requirements, the contract between the ONGC and the contractor can be said to be sham and bogus and therefore, the workmen engaged as contract labour ought to be treated as permanent employees of ONGC. Thus on the ground of the following averments, the Panchayat has prayed for passing the award directing the ONGC to declare the workmen concerned in this reference as permanent workmen of ONGC with a direction to ONGC to treat them as permanent workman and to pay them admissible wages.

2. The Panchayat also moved an application Ex. 6 on 27.04.2001 for interim relief directing the ONGC not to change the service conditions of 94 workmen concerned in the reference by way of termination or otherwise without the permission of the tribunal as being in consonance to Section 33 (1) of the Industrial Disputes Act, 1947, reiterating the averments made in the statement of claim Ex. 5. The tribunal on 27.04.2001 passed an order directing the ONGC to maintain status quo into the matter.

3. The first party ONGC submitted the written statement Ex. 10 wherein the ONGC took preliminary objections that the concerned 94 persons in the reference were not been the workmen as defined under Section 2 (S) of the Industrial Disputes Act and there were no industrial dispute exists defined under Section 2 (K) of the Industrial Disputes Act as these persons were contractual employees. Further objections were also raised that the Panchayat was having a remedy under the Contract Labour (Regulation and Abolition) Act; therefore, this dispute cannot be entertained under the Industrial Disputes Act. It is also submitted that the reference is incompetent and bad in law and the tribunal has no jurisdiction to entertain the dispute, therefore, the reference is liable to be rejected. It is further submitted that there was no master servant relationship between the ONGC and the workmen and as the contractors were not impleaded as party, therefore, the reference is bad for non-joinder of the necessary parties. It is further submitted that the averments made in the statement of claim Ex. 5 are incorrect and are not true. It is also denied that these workmen were doing the watchman work since years as alleged. It is also denied that the workers engaged by the contractor were covered by the notification dated 08.12.1976 under the Act issued by Government of India. The judgement referred in the statement of claim, that is *Air India Corporation V/s National Labour Union*, 1997 (1) CLR Page 292, is not applicable in the case. It is further alleged that these workmen were not appointed as per the recruitment rules of ONGC; therefore, the reference is liable to be decided in negative against the Panchayat/workmen.

4. During the course of proceedings, number of persons moved applications to be impleaded as second party workman in the reference as they were also doing the work of similar nature.

5. On the basis of the pleadings of both the parties, the following issues are to be decided:

I. Whether the demand of Gujarat Mazdoor Panchayat, Ahmedabad that the contract arrangement under which the workmen Shri Baldevbhai Bhimsinh Parmar and 93 others employed in ONGC Cambay Project is sham and bogus and the category in which they are working is prohibited category of employment vide Notification NO. 779 (c) dated 08.12.1976 and the concerned workmen are entitled to be treated in direct employment in ONGC Ltd., Cambay from the date of their joining along with all benefits at par with permanent employees of ONGC Ltd., is legal and justified?

II. To what relief, if any, the workman is entitled?

6. **Issue No. I & II:** Both the issues are interrelated, therefore, decided together. The burden of prove of these issues was lying on the second party union. The second party Panchayat examined one Bhailalbhai D. Parmar vide affidavit Ex. 13 wherein he has stated that he has been working as a Security Guard since April, 1989 and his job was supervised by ONGC officers who used to assign work to him. He was also doing the work of protecting the property of ONGC. He has further stated that 93 others workers listed with the reference are known to him and they were also doing the job similar to him. All of them used to work in 3 shifts and also they have to keep ONGC officers inform on every day while

resuming and leaving the work place. In his cross-examination, he has stated that his posting was near the residential colony of employees but all of them have not issued appointment letters by ONGC. He does not know the date of joining of all the concerned workmen and proof thereof. All of them used to receive Rs. 141/- per day as wages. He does not know the age and educational qualifications of all the concerned workmen. He has admitted that their engagement was always done by the contractor. Provident Fund (P.F.) was also deducted by the contractor.

7. Another witness named Kabhaibhai B. Solanki was also examined vide affidavit Ex. 27 reiterating the same deposition in his examination-in-chief as well as cross-examination as stated by the earlier witness.

8. The first party ONGC submitted documents vide list Ex. 12 like copy of agreement with M/s New Industrial Security Services with the ONGC, certificate of registration under CLRA Act. PF registration letter of the aforesaid contractor, copy of annual return submitted to ALC, Central and copy of licence under CLRA Act by M/s New Industrial Security Services.

9. The ONGC has also submitted the aforesaid documents as mentioned in Para 8 vide Ex. 29 with respect to 60 workmen of another contractor M/s Abhay Intelligence and Security Services and M/s Eagal Security and Personnel Services.

10. The ONGC has also submitted the similar documents vide Ex. 32 with respect to 52 workmen of contractor M/s New Industrial Security Services.

11. The ONGC further submitted 2 documents vide Ex. 30(a) regarding the copy of instructions for guard at lodging point and copy of licence of contractor namely Prime Security and Intelligence Service from the period 31.08.2016 to 30.08.2017.

12. The ONGC vide affidavit Ex. 30 examined one R.S. Bhati, Security Officer, wherein he has stated that these workmen have been working with their respective contractors under their supervision and control. Wages were also paid by the contractors. Contractors used to deduct the Provident Fund and remit the same to the Provident Fund Department. The ONGC was not having any supervision and control over these workmen. They have been working with the prohibited category. ONGC never appointed them as their workmen. ONGC has its own recruitment rules and these persons have not undergone the said process of recruitment. Contract is always provided to the contractors after undergoing a tender process and various documents like copy of agreements, licences and registration which are based on record. He has further stated that on 26.03.2014; only 59 persons were working out of the total 94 persons listed. In his cross-examination done by the Panchayat, he stated that the entire project including well, colony and pipelines are known as Cambay Assets and these Security Guards are used to maintain entry and exit in the project in 3 shifts. He denied that these workmen were doing work since 1977. They were working since 1989. The second party Panchayat did not put any question regarding the workmen doing work under the contractor, therefore, it is admitted that these workmen were doing the work under the contractor.

13. The second party Panchayat vide written argument Ex. 34 submitted that these workers have been doing work as watchman since 1999 concerning ONGC buildings and Oil Tankers in ONGC premises under supervisions of ONGC officers and payment has also made by them. They were regular employees of ONGC since 1989 as per the documentary evidence and notification dated 08.12.1976.

14. The second party Panchayat referred Hussainbhai V/s Alath Factory Thozhilali Union, Calicut, 1978 LLJ Page 1 SC, wherein the Hon'ble Supreme Court has held that in a *laissez faire* economy based on common law and the contractor, the position may be different but the Industrial branch of 3rd World Jurisprudence based on social justice, near contract are not decided and a complex of considerations are relevant in deciding the real dispute. The true test may be indicated once again, where a worker or group of workers labours to produce goods and services and these goods or services are for the business of another, that other is in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid-off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex-contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discover the naked truth, through draped in different paper arrangement, that the real employer is the management, not the immediate contractor. Myriad devices, half hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Arts 38, 39, 42, 43 and 43A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the *maya* of legal appearance.

15. The second party further relied on Steel Authority of India Limited V/s Gujarat Mazdoor Panchayat, 2004 (2) CLR 275 Guj., wherein the Hon'ble High Court did not interfere into the similar matter. He further relied on General Manager, HPCL V/s General Secretary, General Employees Association, 2010 (2) CLR 945 and ONGC V/s Petroleum Employees Union, 2011 (3) CLR 590 wherein it has been held that once the appropriate Government issued notification under Section 10 (1) of the CLRA Act, 1970, prohibiting employment of contract labour to carry out certain operations in the factory or establishment in particular industry or PSU, engaging labourers through contractor to carry out such operations, said contract shall be sham and bogus.

16. The second party has further relied on ONGC V/s CGIT, Lucknow, 2011 (3) CLR 448 wherein the High Court of Uttarakhand held that the High Court in its writ jurisdiction cannot sit like a code of appeal and cannot appreciate or re-evaluate the evidence arriving to a different conclusion.
17. The ONGC made oral submissions that the witness of the first party has stated that in the year 2014, 54 persons out of 94 persons were working and as on 13.01.2017, only 52 persons out of 94 persons were working which were not controverted by the union, therefore, this reference is limited to 52 workmen. As regard the applications Ex. 15 to 25 for impleading of 5 more workmen, same was not pressed.
18. The ONGC has further argued that as per the terms of reference, the concerned workmen were alleged to have been working in prohibited category as per notification dated 08.12.1976 which is not applicable in this case because in the case of Steel Authority of India Limited reported in 2001 (3) CLR 349 SC, the apex court has quashed the aforesaid notification, therefore, the basis of prohibited category for these workmen does not survive. It is also noteworthy that the second party Panchayat accepted the above notification dated 08.12.1976 and raised this matter before High Court in Special Civil Application (SCA) No. 10776/1995.
19. It has further argued by the first party ONGC that the Panchayat has not produced the documentary evidence regarding their due recruitment with the ONGC, appointment date, nature of work; continuous working, age-qualification and fulfilment of eligibility criteria while the ONGC has submitted the documentary evidence vide Ex. 28, 29, 32 & 33 as discussed above. It is further argued that in Yogesh Mahajan V/s Pro. R.C. Deka, Director, AIIMS, 2018 (157) FLR 287 SC, the Hon'ble Supreme Court has held that the persons appointed on contractual or fixed terms cannot claim regularisation. He has further argued that Hon'ble Supreme Court in case of International Airport Cargo Workers Union, 2010 (3) CLR 140 held that if the workers are doing the duty in premises of principle employer and even if there is some degree of supervision and control, they shall not be entitled for regularisation.
20. From the evidences and submissions of the parties, it is fully established that the workmen were engaged by the contractor who has not been impleaded as a party. Second the notification dated 08.12.1976 has not been produced and has also been stayed in the judicial side. Third, as appears from the evidence, only 52 workmen out of 94 workmen were found to be working on the date of reference received in the tribunal. None of the judgements relied by the second party has applicability in the matter. All the workmen were contract employees working under the various contractors as established by the evidence of both the parties and they have not been recruited by the ONGC as per its recruitment process under the rules, therefore, the contract cannot be said to be sham and bogus.
21. It has been admitted by both the parties that all the 52 workmen have been working for a long period in ONGC under the control of contractor, therefore, it would be appropriate to order the ONGC to pay them Rs. 100000/- (Rupees One Lac) to each aforesaid 52 workmen shown in the list of workmen vide Ex. 32/3 working as on 13.01.2017 submitted by ONGC.
22. The award is passed accordingly. The first party is directed to pay the aforesaid amount of Rs. 100000/- (Rupees One Lac) to each 52 workmen within 60 days from the date of publication of this award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1197.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 457/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-11011/11/2001-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 457/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 01.08.2018.

[No. L-11011/11/2001-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 11th July, 2018

Reference: (CGITA) No. 457/2004

The Airport Director,
Airport Authority of India,
Sardar Vallabh Bhai Patel International Airport,
Ahmedabad (Gujarat) – 380003

...First Party

V/s

The Secretary,
Gujarat Mazdoor Panchayat Shram Shakti,
Post Box No. 77, G.P.O. Opposite Prabhat Press,
Mirzapur Road,
Ahmedabad (Gujarat)

...Second Party

For the First Party No : Shri C.N. Naidu

For the Second Party : Shri Sanjay Vaghela

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11011/11/2001–IR(M) dated 07.01.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether Gujarat Mazdoor Panchayat Ahmedabad in demanding to declare the contract agreement by which Shri Mahes Bhai Pujabhai Vaghela and Shri Nareshkumar Kantilal Parmar are employed as sham and bogus and to declare these workmen as permanent workmen of Airport Authority of India with effect from the date of initial employment along with consequential benefits? If so what relief these concerned workmen are entitled?”

1. The reference was received on 07.01.2002 from Ministry of Labour and Employment, New Delhi for adjudication. The second party workmen submitted the statement of claim Ex. 2 on 17.02.2002 and the first party submitted the written statement Ex. 17 on 20.04.2005 along with number of documents. Since then the second party has not been leading evidence. On 10.08.2016, Shri Sanjay Vaghela, Advocate for Gujarat Mazdoor Panchayat Shram Shakti moved an application Ex. 20 on 10.08.2016 seeking opportunity to lead evidence. Since then Shri Sanjay Vaghela failed to lead evidence. On 04.04.2018, Shri Sanjay Vaghela sought last opportunity to lead evidence that too no result. Today on 11.07.2018, the second party workmen as well as his advocate Shri Sanjay Vaghela are absent.

2. Thus it appears that the second party is not willing to prosecute with the reference.

3. Thus the reference in the absence of the evidence of the second party, is disposed of with the observation as under: “the demand of Gujarat Mazdoor Panchayat Ahmedabad to declare the contract agreement by which Shri Mahes Bhai Pujabhai Vaghela and Shri Nareshkumar Kantilal Parmar are employed, is sham and bogus and the demand to declare these workmen as permanent workmen of Airport Authority of India with effect from the date of initial employment along with consequential benefits can be said to be illegal and unjustified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स काण्डला पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1015/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-37011/2/1996-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1015/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kandla Port Trust and their workman, which was received by the Central Government on 01.08.2018.

[No. L-37011/2/1996-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th July, 2018

Reference: (CGITA) No. 1015/2004

The Secretary,
Kandla Port Trust,
Administrative Office, Gandhidham,
Kutch (Gujarat) – 370201

...First Party

V/s

The General Secretary,
Transport & Dock Workers' Union,
Room No. 26, Yogesh Building, Plot No. 589,
Ward No. 12-C, Gandhidham,
Kutch (Gujarat) – 370201

...Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/2/96-IR(M) dated 31.05.1996 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Transport and Dock Workers’ Union, Gandhidham that Shri R.S. Mehta, Sub-Storekeeper, should be promoted to the post of Assistant Store Keeper on regular basis and not Shri Dilipsingh B. Jethwa, Junior Clerk made senior to Shri Jethwa in the category of Assistant Store Keeper just, valid and legal? If so to what benefits Shri R.S. Mehta is entitled for and what directions are necessary in the matter?”

1. The reference dates back to 31.05.1996 and received on 10.06.1996 from Ministry of Labour and Employment, New Delhi for adjudication. Both the parties, submitted the statement of claim and written statements, also led evidence but at the time of argument, the advocate for the second party Shri Nirdosh H. Rathod submitted a letter Ex. 21 on behalf of the second party union The General Secretary, Transport & Dock Workers’ Union, Room No. 26, Yogesh Building, Plot No. 589, Ward No. 12-C, Gandhidham, Kutch, submitting that the union does not want to press the reference.

2. Hence the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1199.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स काण्डला डॉक लेबर बोर्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1242/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-37011/3/2001-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1242/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kandla Dock Labour Board and their workman, which was received by the Central Government on 01.08.2018.

[No. L-37011/3/2001-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 10th July, 2018

Reference: (CGITA) No. 1242/2004

The Deputy Chairman,
Kandla Dock Labour Board,
Shram Deep, Kandla Port,
Kutch (Gujarat) – 370210

...First Party

V/s

The General Secretary,
Transport & Dock Workers Union,
Room No. 21, Yogesh Building,
Ward 12-C, Plot No. 586,
Gandhidham (Gujarat) – 370201

...Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/3/2001-IR(M) dated 09.01.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Kandla Dock Labour Board in not correcting of Date of Birth in Service Book for all purpose, on the basis of School Leaving Certificate of Shri Kapil Dev R., Workman Wage No. 38/TD, Kandla is just, valid and legal? If not, to what benefits the workman is entitled for and what other directions are necessary in the matter?”

1. The reference was received on 09.01.2004 from Ministry of Labour and Employment, New Delhi for adjudication. The second party workman submitted the statement of claim on 20.08.2005 and the first party submitted the written statement Ex. 6 on 10.02.2014. At the stage of evidence, the legal heirs of the deceased workman Kapil Dev R.

submitted an application Ex. 7 on 25.09.2017 for substitution as legal heir of the deceased workman Kapil Dev R. who died on 20.02.2012 that is after 5 years.

2. The first party filed the objection Ex. 8 submitted that the application for substitution of legal heirs has been moved after 5 years, hence, the application is time barred.
3. The legal heirs have not filed any affidavit explaining the delay as to why they are moving the application after a delay of 5 years. Thus the application is not maintainable, hence rejected.
4. The reference has also become abate as the legal heirs have not been substituted within the statutory period.
5. Thus the reference is disposed of as abate.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेन्ट्रल वेयरहाउसिंग कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1246/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2018 को प्राप्त हुआ था।

[सं. एल-42011/8/2003-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th August, 2018

S.O. 1200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1246/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Central Warehousing Corporation and their workman, which was received by the Central Government on 01.08.2018.

[No. L-42011/8/2003-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 03rd July, 2018

Reference: (CGITA) No. 1246/2004

The Manager,
CFS, Central Warehousing Corporation,
Container Freight Stati, Near Kandla Free Trade Zone,
Gandhidham,
Kutch (Gujarat) – 370230

...First Party

V/s

The President,
Akhil Bharatiya Safai Mazdoor Congress,
657, Ward 11, B Dagar Niwas, Maharshi Valmik Nagar,
Gopalpuri, Gandhidham,
Kutch (Gujarat)

...Second Party

For the First Party No : Shri Vikram K. Mashar

For the Second Party : Shri Prem Kumar Sharma

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/8/2003—IR(M) dated 12.02.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Akhil Bharatiya Safai Mazdoor Congress Union regarding regularization of Shri Ramashray Rangoo Yadav and other 55 workers in CWC (CPC), Kandla is justified? If yes what relief the workmen are entitled to?”

1. The reference dates back to 12.02.2004. The second party submitted the statement of claim Ex. 3 on 02.07.2008 and the first party submitted the written statement Ex. 7 on 19.03.2009. The second party also submitted the affidavits of their witnesses vide Ex. 9 and 10 but the second party never produced the witnesses for cross-examination despite giving dozens of opportunities since the year 2010.
2. Thus it appears that the second party is not willing to prosecute the case.
3. Thus the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the demand of Akhil Bharatiya Safai Mazdoor Congress Union regarding regularization of Shri Ramashray Rangoo Yadav and other 55 workers in CWC(CPC), Kandla cannot be said to be justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1085/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41012/116/97-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1085/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41012/116/97-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th July, 2018

Reference: (CGITA) No. 1085/2004

The Divisional Railway Manager,
Western Railway,
Divisional Office, Ajmer Division,
Ajmer (Rajasthan)

...First Party

V/s

The General Secretary,
Western Railway Kamdar Sangh,
T.B.Z. – 17, Gurunagar, Gandhidham,
Kutch (Gujarat) – 370201

...Second Party

For the First Party : Shri R.P. Sharma

For the Second Party : Shri O.P. Vashishtha

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/116/97–IR(B-I) dated 11.03.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Western Railway Kamdar Sangh, Gandhidham, Kutch against the D.R.M., Western Railway, Ajmer for offering appointment on compassionate grounds to the dependent of late Shri Mohangar, Ex. Mate under PWI, Adasar who died in service on 19.12.1993 valid, just and legal? If so, to what relief the dependents are entitled to?”

1. The reference dates back to 11.03.1998 and received on 30.03.1998 from Ministry of Labour and Employment, New Delhi for adjudication. The second party workman submitted the statement of claim Ex. 3 alleging that the deceased workman Mohangar Bhupalgar was appointed as Gangman on 01.05.1968 under the control of Permanent Way Inspector, Adasar under the supervision of the Divisional Railway Manager, Western Railway, Ajmer. He sustained serious injury in his leg but the Railway Administration did not provide him the proper medical treatment, therefore, he was taken to the Civil Hospital where his one of the leg was amputated. He remained on long leave without pay. Later his senior officers advised him to take voluntarily retirement on account of his health with a promise to give job to his son on compassionate ground for sustaining the family. Therefore, under the advised of the senior Railway Officers, he submitted his application for voluntarily retirement on 21.07.1993 which was accepted. Thus he was voluntarily retired with effect from 20.10.1993 and later died on 19.12.1993. The second party, the widow of the deceased workman named Smt. Parvatiben applied for the employment for compassionate ground but her application has not been considered favourably till date despite making number of repeated representation. She has further alleged that under the existing provisions of the Railway Board orders No. E(NG) 111/78/RC-1/1 of 07.04.1983 and 03.09.1983 circulated under the General Manager, Western Railway, Bombay Order No. E (R&T) 890/60(Policy) Vol. II of 22.04.1983 and 02.11.1983 and the latest Railway Board Order No. E(NG) II/95/RC-I/94 of 22.09.1995 circulated under the General Manager, Western Railway Bombay Order No. E (R&T) 890/60(Policy) Vol. IV of 22.11.1995/01.12.1995 PS No. 162/95 notified under Divisional Rail Manager Ajmer Order No. EP 890/0 of 02.01.1996 P.S. No. 162/95 for the consideration of such cases of dependent sons/Daughters but in this case, the Railway Management adopted the negative attitude to deny the appointment of son of Late Mohangar Bhupalgar. She has further alleged that the Railway Management earlier has given such appointment to one Pawan Kumar Yadav as Ticket Collector as Gandhidham in the event of voluntarily retirement of his father B.L. Yadav, Driver due to his ill health. Similarly, the son of one Guard at Gandhidham namely Late Rai Amreshwari Prasad was appointed as Assistant Station Master, Gandhidham on the retirement of his father due to ill health, he was later transferred to North Eastern Railway at his native place. Thus she has prayed that the order of the demand of Western Railway Kamdar Sangh regarding appointment on compassionate ground of Smt. Parvatiben, widow of deceased workman Mohangar Bhupalgar be declared as legal and justified and also to order the appointment of her son on compassionate ground.

2. The first party Western Railway submitted the written statement Ex.7 and submitted that the present reference does not come under the term of Industrial Disputes under Section 2 (k) of the Industrial Disputes Act. The first party cannot be defined as Industry as defined in Section 2 (j) of the Industrial Disputes Act. The deceased workman took voluntarily retirement, therefore, he is a retired employee, therefore, cannot be terms as workman under Section 2 (k) of the Industrial Disputes Act. It is further submitted that the deceased Mohangar Bhupalgar voluntarily retired on 20.10.1993 and died after retirement, therefore, Smt. Parvatiben or her son cannot be appointed on compassionate ground.

3. On the basis of the pleadings of both the parties, the following issues are to be decided:

- I. Whether the demand of the Western Railway Kamdar Sangh, Gandhidham, Kutch against the D.R.M., Western Railway, Ajmer for offering appointment on compassionate grounds to the dependent of late Shri Mohanagar, Ex. Mate under PWI, Adasar who died in service on 19.12.1993 is valid, just and legal?
- II. To what relief, if any, the workman is entitled?

4. **Issue No. I & II:** Both the issues are interrelated, therefore, decided together. The burden of prove of these issues was lying on the second party. The second party examined Smt. Parvatiben who reiterated the averments made in the statement of claim and has not stated anything contrary in her cross-examination.
5. The first party submitted the affidavits of Nandkishor Bholaram Kharti and Krishankumar Verma vide Ex. 27 and 28 respectively stating that the workman Mohangar Bhupalgar died after taking voluntarily retirement, therefore, the provisions of the rules regarding appointment on compassionate ground does not apply in the case. It is also noteworthy that the second party or her advocate did not appear to cross-examine the witnesses of the first party despite sending the copies of the affidavit to the General Secretary of the second party union, Shri O.P. Vashishtha.
6. I considered the matter in the light of the evidence on record as it is an admitted fact that the deceased workman died after retirement, therefore, appointment on compassionate ground cannot be ordered in the case.
7. Thus the reference is disposed of with the observation as under: “the demand of the Western Railway Kamdar Sangh, Gandhidham, Kutch against the D.R.M., Western Railway, Ajmer for offering appointment on compassionate grounds to the dependent of late Shri Mohanagar, Ex. Mate under PWI, Adasar who died in service on 19.12.1993 is not valid, just and legal.”
8. Thus no relief can be granted. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 149/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/09/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 149/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41011/09/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th July, 2018

Reference: (CGITA) No. 149/2006

1. The Chief Store Controller,
Western Railway,
Church Gate,
Mumbai
2. The Deputy Store Controller,
Western Railway,
Sabarmati,
Ahmedabad (Gujarat)

...First Party

V/s

The General Secretary,
Paschim Railway Karmachari Parishad,
E-209, Sarvottamnagar, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/09/2005—IR(B-I) dated 19.07.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Western Railway in imposing the penalty of removal from service on Shri S.M. Vyas w.e.f. 08.11.2000 is justified? If not, what relief he is entitled to?”

1. The reference dates back to 19.07.2006 and received on 11.08.2006 from Ministry of Labour and Employment, New Delhi for adjudication.
2. In response to the notice Ex. 2, the second party submitted the statement of claim Ex. 12 on 05.08.2010 and the first party submitted the written statement Ex. 14 on 14.10.2011.
3. The case was listed for evidence of the second party but today on 19.07.2018, Shri R.S. Sisodiya, the General Secretary of the second party union Paschim Railway Karmachari Parishad, Ahmedabad, , did not press the reference.
4. Hence the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 150/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/54/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 150/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41011/54/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th July, 2018

Reference: (CGITA) No. 150/2013

The Divisional Railway Manager,
Western Railway,
Mumbai Central,
Mumbai

...First Party

V/s

The President,
Paschim Railway Karmachari Parishad,
28/B, Narain Park,
Behind Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 382470

...Second Party

For the First Party : None

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/54/2013–IR(B-I) dated 01.08.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Paschim Railway Karmachari Parishad to give salary to Shri Indersingh D., Sr. P/Man working under the control of Station Master, Western Railway, Navsari which reduced w.e.f. 1976 vide letter dated August, 1991 and give the pay of Rs.3950/- instead of Rs.3850/- w.e.f. 31.12.2005 and to make the payment which deducted from his salary is legal, proper and just? If so, to what relief the concerned workman Shri Indersingh D. is entitled to?”

1. The reference dates back to 01.08.2013 and received on 17.08.2013 from Ministry of Labour and Employment, New Delhi for adjudication. The second party submitted the statement of claim Ex. 2 alleging that the workman Indersingh D. was initially appointed in the year 1976 and was granted temporary status vide letter no. BCIM No. E/891/4 dated 20.02.1976 fixing his pay in the pay scale of Rs. 196-231/-. Later the first party revised the pay and fixed his wages at Rs. 196/- from 12.08.1982 on the ground that the employer had not granted temporary status. Thus the order was illegal and liable to be set aside and quashed. Thus he has prayed for seeking direction to the first party employer to grant the workman the scale of Rs.196/- w.e.f. 1976 declaring the order of the first party dated 20.12.2008 as illegal. He has further prayed that the workman be fixed in the pay scale of Rs.6200-20200/- with a grade pay of Rs.1900/- and basis pay of Rs.10120/-.
2. The first party despite service of notice did not submit the written statement, therefore, the reference was ordered to proceed ex-parte on 06.07.2017 against the first party.
3. The second party union submitted the affidavit Ex. 5 of workman Indersingh D. reiterating the averments made in the statement of claim and submitting that he was appointed on 20.02.1976 in the pay scale of Rs. 196-232/- reducing his basis pay at Rs. 196/- w.e.f. 12.08.1982 without giving him any information. He has also stated that his pay was also reduced w.e.f. 20.12.2008 and his pay was also wrongly fixed at Rs. 3850/- in place of Rs.3950/- w.e.f. 31.12.2005. He has also filed the copies of the fixation of pay which appears to have been communicated to him at the relevant time but he did not challenge the orders of fixation of pay at different time in any higher forum despite the fact that the pay was fixed several years ago. Therefore, the reference is barred by the principle of estoppel being moved the reference after accepting the pay fixation at the relevant time.
4. Therefore, the reference has no force and disposed of with the observation as under: “the demand of Paschim Railway Karmachari Parishad to give salary to Shri Indersingh D., Sr. P/Man working under the control of Station Master, Western Railway, Navsari which reduced w.e.f. 1976 vide letter dated August, 1991 and give the pay of Rs.3950/- instead of Rs.3850/- w.e.f. 31.12.2005 and to make the payment which deducted from his salary is not legal, proper and just.
5. Thus no relief can be granted. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 41/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/14/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41011/14/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th July, 2018

Reference: (CGITA) No. 41/2014

1. The Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda (Gujarat)
2. The Manager,
Allahabad Bank, Shahjapur (Shikohabad),
Farrukabad (Uttar Pradesh)

...First Party

V/s

The Dy. General Secretary,
Paschim Railway Karmachari Parishad,
28/B, Narain Park,
Behind Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat)

.....Second Party

For the First Party No : None

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/14/2014-IR(B-I) dated 25.03.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Paschim Railway Karmachari Parishad for correct pay fixation of Shri Rameshwar Dayal, Retd. ELF, Gr. I by the management of Divisional Railway Manager, Western Railway, Baroda is justified? If so, to what relief the workman is entitled to?”

1. The reference dates back to 25.03.2014 and received on 11.04.2014 from Ministry of Labour and Employment, New Delhi for adjudication. In pursuance of the notice, the second party union Paschim Railway Karmachari Parishad submitted the statement of claim Ex. 6 alleging that the workman named Rameshwar Dayal retired as ELF Gr. I under Divisional Railway Manager, Western Railway, Pratapnagar, Baroda. The workman Rameshwar Dayal was fixed with the basis pay of Rs.1760/- in the pay scale of Rs.1320-2040/- but he was denied the basis pay of Rs.1760/- despite the fact that a employee junior to him was fixed at the basis pay of Rs.1850/- in the pay scale of Rs.1320-1340/-. Later he

was promoted to the post of ELF, Gr. I on 29.11.1995 but without considering his basis pay at Rs.1760/- and to fix his pay at Rs. 5400/- on promotion, he was given basis pay of Rs.4300/- at the time of promotion. He made number of representation but to no result.

2. The first party was served vide acknowledgement Ex. 4. The other first party Allahabad Bank returned the notice sent to him. The first party Western Railway did not file the reply or written statement, therefore, on 06.01.2017, the reference was ordered to proceed ex-parte against the first party.

3. The second party in support of his statement of claim Ex. 6, submitted the affidavit Ex. 8 stating the reasons regarding depriving him the correct pay and pension fixation.

4. The second party union has not filed the copies of the fixation of pay and pension and the relevant circulars regarding the fixation of pay, therefore, in the light of the affidavit Ex. 8, the Divisional Railway Manager, Western Railway, Pratapnagar, Baroda is directed to consider the affidavit Ex. 8 of the workman Rameshwar Dayal and to pass appropriate order within 30 days from the publication of the award.

5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 469/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/404/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 469/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-12012/404/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th July, 2018

Reference: (CGITA) No. 469/2004

1. The Branch Manager,
State Bank of India,
Pragatinagar Branch, Ankur Road, Naranpura,
Ahmedabad (Gujarat)– 380001
2. The Regional Manager,
State Bank of India,
Regional Office,
Nr. C.N. Vidhyalaya, Ambavadi,
Ahmedabad (Gujarat)- 380001 ...First Party

V/s

Shri Chirayush Manubhai Bhavsar,
B-10/2, Swagat Apartment,
Opp. Bhavsar Society, Nava Vadaj,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri B.K. Oza

For the Second Party : Shri Priyank P. Jhaveri

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/404/2001-IR(B-I) dated 11.03.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India, Ankur Road, Ahmedabad in discontinuing the service of Shri Chirayush Manubhai Bhavsar w.e.f. 08.05.2001 without following the provisions of Section 25 F, G and H of the Industrial Disputes Act, 1947 is justified? If not, what relief the concerned workman is entitled?”

1. The reference dates back to 11.03.2002 and received on 05.09.2002 from Ministry of Labour and Employment, New Delhi for adjudication.
2. Both the parties submitted the statement of claim and written statement on different dates. The case was listed for evidence of the second party but today on 17.07.2018, both the parties jointly submitted a settlement Ex. 14 which was read over and explained to both the parties. The parties admitted the terms of settlement; hence the settlement was accepted by the Tribunal. The settlement reveals that the first party bank has agreed to pay Rs.165000/- (Rupees One Lac Sixty Five Thousand) to the second party workman Chirayush Manubhai Bhavsar towards full and final settlement.
3. Thus the reference is finally disposed of in terms of settlement Ex. 14. The settlement Ex. 14 shall remain the part of final award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1206.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 60/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/20/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41011/20/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 13th July, 2018

Reference: (CGITA) No. 60/2017

1. The Divisional Railway Manager,
Western Railway,
Divisional Office, Asarwa, Nr. Chamunda Bridge,
Ahmedabad (Gujarat)
2. The Assistant Divisional Engineer(NW),
Western Railway,
Divisional Office, Asarwa, Nr. Chamunda Bridge,
Ahmedabad (Gujarat)
3. The Chief Medical Officer,
Railway Hospital, Western Railway,
Sabarmati, D Cabin,
Ahmedabad (Gujarat)

...First Party

V/s

The Joint Divisional Secretary,
Paschim Railway Karmachari Parishad,
28/B, Narayan Park,
Behind Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 382470

...Second Party

For the First Party No : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/20/2017–IR(B-I) dated 30.06.2017 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Joint Divisional Secretary, Paschim Railway Karmachari Parishad, Ahmedabad to reschedule the Promotion Seniority List of workmen for cadre restructuring from Track Maintaner Gr. IV to Track Maintaner Gr. III is legal, fair and justified? If yes, then what relief the union/workman is entitled to and what other directions are necessary in the matter?”

1. The reference dates back to 30.06.2017 and received on 11.07.2017 from Ministry of Labour and Employment, New Delhi for adjudication. All the parties issued notice Ex. 2 on 03.01.2018 to appear on 08.03.2018 to file their claims. Acknowledgement slips of second party union and first party no. 1 & 3 were also received vide Ex. 3, 4 & 5 respectively. But the second party union did not prefer to file the statement of claim; however, Shri Yogi Gadhia filed his vakalatpatra Ex. 6 on behalf of the first party no. 1. Thereafter, 3 more opportunities were given to the second party union to file its statement of claim but to no result.
2. Thus it appears that the second party union is not willing to prosecute with the reference.
3. Thus the reference is disposed of in the absence of the statement of claim and non-prosecution of the case by the second party union with the observation as under: “the demand of Joint Divisional Secretary, Paschim Railway Karmachari Parishad, Ahmedabad to reschedule the Promotion Seniority List of workmen for cadre restructuring from Track Maintaner Gr. IV to Track Maintaner Gr. III can be said to be illegal, unfair and unjustified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1207.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 42/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/93/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41011/93/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 06th July, 2018

Reference: (CGITA) No. 42/2011

1. The Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda (Gujarat) –390004

2. The Assistant Engineer,
Western Railway,
Godhra (Gujarat) – 389001

...First Party

V/s

The President,
General Workmen's Union,
Sinduri Mata Devasthan, Post Godhra,
Panchmahal (Gujarat) – 389001

...Second Party

For the First Party No : Shri Rajesh Singh Thakur

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/93/2010-IR(B-I) dated 02.05.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Divisional Railway Manager, Western Railway, Baroda, in not paying family pension and other dues to Smt. Jeliben Jenabhai Parmar w/o late Shri Jenabhai Parmar, Ex-Gangman, who died while in service on 28.09.1973, is legal and justified? To what relief the widow of workman is entitled?”

1. The reference was received on 02.05.2011 from Ministry of Labour and Employment, New Delhi for adjudication. The second party submitted the statement of claim Ex. 3 on 09.10.2011 along with authority letter Ex. 4 of Shri J.K. Ved, union representative. The first party submitted the written statement Ex. 7 on 07.03.2018 along with vakalatpatra Ex. 6 of Shri Rajesh Singh Thakur, advocate. Since then, the case was listed for evidence of second party.
2. Today on 06.07.2018, Shri J.K. Ved on behalf of the second party requested the tribunal to withdraw the case.
3. Thus the reference is disposed of as withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईस्ट कॉस्ट रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 15/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41012/12/2009-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of East Coast Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41012/12/2009-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 15/2010

Date of Passing Award – 25th June, 2018

Between:

1. M/s. General Security & Information Services (P) Ltd., At. 7/C Abinash, Ch. Banerjee Lane, East Beliaghata, Kolkatta – 700 010.
2. The General Manager,
East Coast Railway, At. Rail Vihar
Chandrasekharapur, Bhubaneswar, Orissa

...1st Party-Managements

(And)

Their Workman, Shri Shakti Prasanna Panigrahi & 5 others,
C/o. Ramesh Ch. Panigrahi, Sarbodaya Nagar,
Po. & Dist. Puri.

...2nd Party-Workmen

Appearances:

None ... For the 1st Party-Management No. 1

M/s. D. Mohanty, Advocate ... For the 1st Party-Management No. 2.

Shri S.R. Panigrahi,
One of the Workmen. ... For the 2nd Party- Workmen

AWARD

The Government of India in the Ministry of Labour *vide* its letter No. L-27012/19/2015-IR(M), dated 22.01.2016 in exercising its authority conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (herein after referred to as “The Act”) have referred for an adjudication of a dispute “whether persons employed by the management of M/s. General Security & Information Services (P) Ltd. Rly Contractor who have raised

the dispute of termination are discharging managerial functions as contended by the management or are discharging duties of workmen satisfying definition of Section 2(s) of the Act? (2) If the persons are discharging duties of workmen, whether the action of the management of General Security & Information in terminating services of S/Shri Shakti Prasanna Panigrahi, Soumya Ranjan Panigrahi, Natabar Pradhan, Anad Rosan Guria, Sunil Kumar Behera, Paresh Chandra Padhi w.e.f. 24.3.2008 without following the provisions of the I.D. Act, 1947, is legal and justified? If not, to what relief the workmen concerned entitled to”?

2. The case of the disputant workmen, in short, as revealed from their statement of claim is that the 1st Party-Management No. 1 having been selected as a contractor by the 1st Party-Management No. 2 was entrusted to wash and clean railway coaches inside the depot shed of East Coast Railway at Bhubaneswar from the year 2005 on-wards. Accordingly, the Contractor Management No. 1 engaged more than 200 persons to execute the contract work. It has been claimed by the disputant workmen that the workman Shakti Prasad Panigrahi joined in the Management No. 2 on 1.12.2005 as office in-charge, the workman Soumya Ranjan Panigrahi joined on 1.1.2006 as Shift in-charge, workmen namely S/Shri Natabar Pradhan, Azad Rosan Guria and Sunil Kumar Behera joined on 1.4.2007 as Cleaners and workman Shri Paresh Ch. Padhi joined on 1.4.2007 as Shift in-charge in the establishment of the Management No. 2. The workmen 1, 2 and 6 were receiving a monthly salary of Rs. 3400/- whereas the workmen at 3, 4 and 5 were getting a monthly salary of Rs. 2700/- on their joining. Provident Fund contributions including E.S.I. were deducted from their salary. They are stated to have been working in the establishment of the Management No. 1 continuously and uninterruptedly till their services are terminated on 24.3.2008. According to the disputant provisions of Section 25-F i.e. notice and retrenchment compensation were not paid to them when their services were terminated despite they had worked for more than 240 days continuously in a preceding twelve calendar months. Thus, their termination/retrenchment being in violation of Section 25-F is illegal and unjustified. As such, they are entitled to be reinstated with back wages and other service benefits.

3. On being noticed the Managements contested the claim and filed separate written statements. Management No. 1 filed its written statement challenging the claim on a contention that his organization was entrusted the contract work of washing and cleaning of railway coaches in a tender process. The workman No. 1, 2 and 6 were engaged as supervisory staff whereas workman No. 3, 4 and 5 joined as daily wagers/labours knowingly fully that they were engaged on the basis of “no work no pay”. As they did not discharge their duty satisfactorily and complaints were received against them regularly for negligence in duty on their part, they were shifted and posted at Vishakapatnam to perform the same type of jobs entrusted to them at Bhubaneswar. It is the stand of the Management No. 1 that the disputant workmen did not report to their duty at Vishakapatnam and they have abandoned their service voluntarily. There was no termination of service of the disputant workmen and as they had left their job on their own accord, question of compliance of the provisions of Section 25-F does not arise in the case. In its written statement the Management No. 2 has denied their liability taking a stand that in no point of time the disputant workmen were ever engaged by him. As there was no relationship of “employer and employee” between him and the disputant workmen, question does not arise for termination of service by him. According to him the Management No. 2 entered into a contract vide agreement No. 17, dated 22.7.2005 to clean the coaches with effect from 1.6.2005 to 28.2.2007. The said Management was again outsourced for the period from 20.3.2007 to 19.3.2012 to clean railway coaches. The disputant might have been engaged by the said contractor agency and as such, the Management No. 2 is no way liable for violation of any provision of the I.D. Act. After filing of written statements the Management No. 1 did not participate in the proceeding for which he has been set exparte. However, the Management No. 2 has contested the claim and also adduced evidence to refute the stand of the disputant workmen.

4. On the aforesaid pleadings of the parties the issues mentioned below have been settled for adjudication of the dispute.

ISSUES

1. Whether the persons employed by the management of M/s. General Security & Information Services (P) Ltd. Rly. Contractor who have raised the dispute of termination and discharging managerial functions as contended by the management or are discharging duties of workmen satisfying definition of Section 2(s) of the Act?
2. If the persons are discharging duties of workmen, whether the action of the management of General Security & Information in terminating services of S/Shri Shakti Prasanna Panigrahi, Soumya Ranjan Panigrahi, Natabar Pradhan, Anad Rosan Guria, Sunil Kumar Behera, Paresh Chandra Padhi with effect from 24.3.2008 without following the provisions of the I.D. Act, 1947, is legal and justified?
3. If not, to what relief the workmen concerned entitled to?

5. In order to substantiate their claim the disputant workmen have adduced oral evidence examining the disputants Shri Soumya Ranjan Panigrahi and Shakti Prasanna Panigrahi as W.W.-1 and W.W.-2 and produced documents like copy of the appointment as office in-charge for Bhubaneswar Coaching Depot dated 2.2.2007, copy of the duty allotment

order of S.P. Panigrahi of dated 2.2.2007, copy of the duty allotment order to S.R. Panigrahi dated 27.12.2006 and copy of the duty allotment order to P.C. Padhi on 27.7.2007 which are marked as Ext.-1 to Ext.-4. On the other hand, the Management No. 2 has examined Shri K. Sudarsan, A.D.M.E., E.Co. Railway, Bhubaneswar to refute the allegations.

FINDINGS

6. For the sake of convenience all the issues are taken up together for their consideration.

The first ground of objection to the maintainability of the reference is that the disputants being entrusted with the work of Supervisor cannot be covered by the term “workman” as defined under section 2(s) of the Act. On a careful examination of the pleadings of the parties and the evidence adduced on behalf of the 2nd party-workmen it is seen that there is no serious dispute to the claim of disputants that two of them i.e. W.W.-1 and W.W.-2 were making entries in registers and other official records and they were also supervising the work of labours including other disputants engaged in cleaning and washing of the railway coaches. Such supervision of work being executed by labours cannot be said to be a managerial function or work by any stretch of imagination. Further, it is apparent from Ext.-2 & 3 which are the official orders of Management No. 1 passed in course of administration that W.W.-1 and disputant Shri Padhi were asked to see the attendance of the employees in their shifts and to maintain records in regard to distribution of work to the employees. They are to maintain the stock of machine and materials and they are to furnish statement in regard to progress of work. That apart, they were receiving monthly salary of Rs. 3400/- and Rs. 2700/- respectively and no employee of managerial cadre was not expected to receive such wages which appears to be less than minimum wages fixed for a skilled labour in the prevalent year. The evidence of the Management No. 2 as well as its pleading is totally silent as to the nature of duties discharged by each disputant workman whereas the Management No. 1 is set exparte and as such there is no evidence on its behalf to demolish the oral evidence of the 2nd party workmen that they were engaged in the category of “workmen”. In the above back-drops the Issue No. 1 is answered in favour of the disputant workmen.

7. Though, the disputant W.W.-1 and W.W.-2 have claimed in their examination in chief that they were retrenched from their services, in their cross examination they have admitted that on being transferred to Vishakpatnam and Assam they did not report to their new place of assignment. Further, it is emerging from the appointment letter (Ext.-1) issued in favour of W.W.-1 that his period of appointment was five years from the date of his joining in view of contractual agreement between Management No. 1 and 2. Admittedly, no appointment letters of other disputant workmen are produced before the Tribunal. However, the evidence of workmen witnesses are not seriously challenged as to their employment in the establishment of Management No. 1. There is also no serious challenge to the claim of the disputant workmen and their evidence that they were working continuously for more than 240 days in a calendar year before their alleged retrenchment. It is elicited from cross examination of W.W.-1 and W.W.-2 that they were transferred to Vishakpatnam and Assam respectively. But, they did not report to their duty. It has been pleaded by the Management No. 2 that the workmen were never refused employment or retrenched and it is its specific stand that they did not report to their new place of assignment and as such, they are found to have abandoned their jobs on their own accord. Ext.-1 is the copy of the appointment order issued in favour of W.W.-1. On a close reading of the said order it is found that the disputant was posted to work in the office of the Branch Manager of Bhubaneswar Depot and his scale of pay was fixed as per the guidelines of East Coast Railway. Further, it has been mentioned in Ext.-2 that his appointment was exclusively for Bhubaneswar Depot and not transferable, though the period of appointment was for five years. Be that as it may, the appointment of other disputants can be safely presumed to be not transferable and their place of posting was exclusively for Bhubaneswar Depot. Hence, any order of transfer by the Management No. 2 is apparently a violation of service condition and the same can be treated as unfair labour practice if no consent is obtained from the concerned workman for his transfer. Though claim has been advanced by the Management No. 1 in his written statement that the disputants were never refused employment/engagement, there is no evidence on its part to show that the disputants were ever noticed or departmentally proceeded with for their non-reporting to their duties. Pleading is also advanced by the Management No. 2 that the disputants were transferred as their performances were not satisfactory and complaints were received against them. But, no document or evidence in this regard is advanced and as such, any order of transfer on the part of the Management No. 2 cannot be sustainable in the eye of law when the terms of appointment prohibits such transfer. It is the oral testimony of W.W.-1 and W.W.-2 that they were refused engagement on 24.03.2008. Any transfer order in violation to the terms and conditions of the appointment letter in the case at hand would amount to refusal of employment. Undisputedly, the disputants were not paid any notice pay or retrenchment compensation when they were transferred and asked to join elsewhere than Bhubaneswar. Further, they had worked for more than 240 days in a calendar year preceding to the date of their transfer. In the above back-drops it can be safely be said that the alleged retrenchment was in violation of the provisions of Section 25-F of the Act since the period/term of appointment was not completed. It is in evidence and pleading of the parties that the disputants were engaged in the year 2006 and 2007 whereas they were asked to join in their new place of assignment on 24.3.2008. Thus, their retrenchment or refusal of employment at Bhubaneswar without notice pay and retrenchment compensation is illegal and unjustified.

8. Coming to the issue of relief to which the disputants are entitled it is seen that as per Ext.-1 the period of employment was for only five years whereas the workmen are found to have worked for the Management No. 2 continuously for a maximum period of two years. As per the settled principles reinstatement is not automatic in cases of

all illegal termination/retrenchment. Direction of reinstatement is usually depends upon various factors like nature and terms of appointment, period of engagement, availability of work with the Management, facts and circumstances under which the alleged termination or retrenchment was taken place and other factors. In the case at hand the Management No. 2 had a work order for five years which is stated to have been completed in the year 2012. There is no evidence on the part of the disputant workmen that the Management No. 2 is still entrusted with the work of cleaning and washing railway coaches at Bhubaneswar. They have worked only for two years and term of their appointment was for five years only. Having regard to the above facts and circumstances in my considered view it is not a fit case for directing reinstatement of the disputant workmen. However, the retrenchment apparently being illegal and in violation of Section 25-F the disputants are entitled to receive compensation of Rs. 50,000/- each which appears to be just and appropriate taking into consideration of their terms of appointment and the period for which they had worked for the Management No. 1. Now it is to be seen who is to bear the expenses towards payment of compensation to the disputant workmen.

9. As it appears from the pleadings and evidence of the parties that there is no serious dispute to the fact that the Management No. 1 was out-sourced by the Management No. 2 for cleaning the railway coaches inside the depot shed of East Coast Railway at Bhubaneswar and in turn, the disputants workmen were employed by the Management No. 1 for cleaning and for supervision of such work. As per the pleadings and evidence of the disputant workmen no role was played by the Management No. 1 in employment or appointment of the disputants in such work. There is no pleading or evidence to claim that the Management No. 2 was ever controlling or supervising the individual work of the disputants or there was employer and employee relationship between the Management No. 2 and the disputant workmen. In that view of the matter the liability of the Management No. 2 is only limited to ensure payment of prescribed minimum wages to the disputant workmen as per provision of Contract Labour Act. There is nothing substantial in the evidence of the disputant workmen that there was any laches or lapses on the part of the Management No. 2 for which they were deprived of prescribed minimum wages from their employer contractor. Further, no allegation in this regard has been raised either in the claim statement or in oral testimonies of the disputant workmen. Their only grievances is that their services were terminated illegally without proper compliance of the provisions of Section 25-F despite they worked for more than 240 days continuously in the establishment of the Management No. 1 in a preceding twelve calendar months before their disengagement. In that view of the matter the Management of Railway (Management No. 2) has no liability to pay the compensation. The Management No. 1 being the employer of the disputant workmen are liable to pay the compensation.

10. Hence, it is ordered. The Management No. 1 is directed to pay the compensation of Rs. 50,000/- (Rupees Fifty Thousand) only to each of the disputant workmen for their illegal retrenchment. The said compensation shall be paid within three months from the date of publication of the award failing which the workmen are directed to receive interest at the rate of 8% per annum on the compensation amount with effect from the date of publication of the award.

11. Reference is answered accordingly. A copy of the award be sent immediately as per Rule for publication. Free copy of the award be also furnished to the parties after its notification.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 73/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41011/04/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 06.08.2018.

[No. L-41011/04/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 05th July, 2018

Reference: (CGITA) No. 73/2012

The Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda (Gujarat)

...First Party

V/s

The President,
Paschim Railway Karmachari Parishad,
28/B, Narayan Park, Behind Chandkheda Railway Station,
Sabarmati,
Ahmedabad (Gujarat)

... Second Party

For the First Party : Shri N.J. Acharya

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/04/2012-IR(B-I) dated 29.03.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Western Railway, Baroda in not granting family pension to the widow of late Shri Muthuswami Marimuthu, Gangman who died on 09.10.1986 while in service, is legal and justified? To what relief the widow of deceased workman is entitled?”

1. The reference was received on 29.03.2012 from Ministry of Labour and Employment, New Delhi for adjudication. In response to the notice, the second party union The President, Paschim Railway Karmachari Parishad, 28/B, Narayan Park, Behind Chandkheda Railway Station, Sabarmati, Ahmedabad, hereinafter referred to as “Union”, submitted the statement of claim Ex. 3 on 04.10.2012 alleging that the second party workman Muthuswami Marimuthu working as Gangman in the first party Western Railway hereinafter referred to as “Western Railway”, died on 09.10.1986. The dispute was raised before the Conciliation Officer cum Assistant Commissioner of Labour for conciliation as his widow was denied the family pension. The dispute ended in failure; therefore, Conciliation Officer cum Assistant Commissioner of Labour forwarded the matter to the Ministry of Labour and Employment, New Delhi for referring to CGIT-cum-Labour Court for adjudication. The Ministry of Labour and Employment send the reference to CGIT-cum-Labour Court as given in the aforesaid schedule for adjudication.

2. The brief facts of the case in the statement of claim Ex. 3 are that the workman Muthuswami Marimuthu was initially appointed on 14.11.1975 as Gangman. He served the first party till 09.10.1986 when he died after completing more than 240 days in each calendar year. He died on duty; therefore, his wife submitted an application for compassionate appointment in place of her late husband. The western railway considered the case of the widow of the deceased workman and appointed her on compassionate ground but she was denied the benefits of family pension despite the service rules. The second party union mentioned the Rule 75 of Railway Service (Pension) Rules, 1993 in statement of claim which is reproduced as under:

“(1) The Provisions of this rule shall apply:-

- (a) To a railway servant entering service in a pensionable establishment on or after 01st of January, 1964; and
- (b) To a railway servant who was in service on the 31st of December, 1963 and came to be governed by the provisions of the Family Pension the Scheme for railway employees, 1964, contained in

Railway Board's letter No. F(P)63PN-1/40, dated the 02nd of January, 1964 as in force immediately before the commencement of these rules.

Note: The provisions of this rule have also been extended from 22nd of September, 1977, to railway servants on pensionable establishments who retired or died before the 31st of December, 1963 and also to those who were alive on that date but had opted out of the 1964 scheme.

(2) Without prejudice to the provisions contained in Sub-rule (3), where a railway servant dies:-

- (a) After completion of one year of continuous service, or
- (b) Before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service.
- (c) After retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred in Rule 53."

3. It is further alleged that despite the aforesaid rules, the widow of the deceased workman was denied for family pension; therefore, the union has prayed to grant the family pension to the widow of deceased workman objecting the appearance of the advocate of the first party in the proceedings.

4. Despite the aforesaid objections to the appearance of the advocate of the first party in the proceedings, Shri N.J. Acharya, advocate submitted his vakalatpatra Ex.4 on behalf of the first party Western Railway but did not prefer to submit the written statement, therefore, on 16.09.2016, the reference was ordered to proceed ex-parte against the first party Western Railway.

5. In support of the statement of claim, the widow named Tanna Pakyam of the deceased workman submitted her affidavit Ex. 5 reiterating the averments made in the statement of claim Ex. 3 briefly stating that her husband was working as Gangman since 14.11.1975 and died on 09.10.1986 while working on duty after serving for more than 10 years.

6. In support of the averments made in the statement of claim, the second party union referred the judgement of the apex court in Prabhawati Devi V/s Union of India, 1996(A) Service Law Reporter, Page 28 wherein the apex court has held that deceased kept working as substitute till the time of his death on 05.01.1987 and acquired certain rights and privileges under Rule 2318 of the rules of Railway Establishment will entitle his widow and children to the benefit of family pension.

7. Thus in the light of the aforesaid rules and law, the widow Tanna Pakyam of the deceased workman Muthuswami Marimuthu is entitled for the benefits of family pension in the absence of the objections of the first party Western Railway.

8. Thus the reference is disposed of with the observation as under: "the action of the management of Western Railway, Baroda in not granting family pension to the widow of late Shri Muthuswami Marimuthu, Gangman who died on 09.10.1986 while in service, is illegal and unjustified.

9. The first party Western Railway is directed to determine and sanction the family pension to the widow named Tanna Pakyam of the deceased workman Muthuswami Marimuthu as per the rules within 60 days from the publication of the award.

10. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दीपक और कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 12/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-41012/19/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2018) of the Central Government Industrial Tribunal-cum-Labour

Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Deepak and Company and their workmen, received by the Central Government on 06.08.2018.

[No. L-41012/19/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 12/2018

Shri Manoj Sahni S/o Shri Ram Dev Sahni,
C/o Shri Sunil Kumar, Advocate,
F-609, Karkardooma Court,
Delhi – 110 032

...Workman

Versus

M/s Deepak and Company, through
Its Proprietor Shri Rakesh Gupta,
7226, Main Qutub Road,
Near Nabi Karim Police Station,
Delhi – 110 055

...Management

AWARD

Central Government, vide letter No.L-41012/19/2017-IR(DU) dated 04.01.2018, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of IRCTC and their contractor M/s Deepak & Co., Delhi in terminating the services of the workman Shri Manoj Sahni S/o Shri Ram Dev Sahni is fair and legal? If not, what relief the workman concerned is entitled to?”

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Manoj Sahni opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workman as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : June 11, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर (उ.प्र.) के पंचाट (संदर्भ संख्या 81/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/42/2014-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-12011/42/2014-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 81 of 2014

Between :

Member,
State Committee of UP Bank Workers Org.
3/13 Mathura Nagar,
Agra.

And

Regional Manager,
Central Bank of India,
Sanjay Place,
Agra.

AWARD

1. Central Government Mol, New Delhi, vide notification no. L-12011/42/2014-IR(B-II) dated 27.06.14, has referred the following dispute to this tribunal for adjudication-
2. Whether the action of the management of Central Bank of India in depriving the opportunity of promotion of Sri Pappu Lal Verma, SWO posted in Jaddari Branch, Aligarh for the post of Assistant Manager is just and proper and if not to what relief the concerned workman is entitled?
3. The case of the Union as set up on behalf of workman Sri Pappu Lal Verma is that the worker is posted as SWO at Jattari Branch, District Aligarh of the bank. It is alleged that an examination for promotion at the post of Assistant Branch Manager, was conducted by the bank on All India Basis on 28.02.12 and the worker also has submitted his application form prior to 5 days from the date of commencement of examination. On 25.06.12 it came to the notice of the worker the written examination for promotion had already been conducted on 24.06.12. On coming to know regarding conduct of written examination, the worker through proper channel submitted a representation addressed to the General Manager of the Bank but the branch manager refused to accept the representation of the worker then the worker submitted his representation through registered post. As the worker is an active trade union member, therefore, with malafide intention he was deprived from promotion test deliberately by the authorities of the bank without any basis which is illegal and liable to be struck down.
4. Accordingly it is prayed by the union that the worker be deemed to have been promoted at the post of Assistant Manager, JMGS-I in the bank.
5. The management of bank has submitted its written statement in which it is pleaded that since the worker has failed to submit his application within stipulated time i.e. 26.04.12, subsequently he submitted his request through fax on 02.05.12, which was not considered by the Regional Office of the bank, hence question of his appearance in the written test does not arise. As such union is not entitled for any relief for its worker Sri Pappu Lal Verma and accordingly its claim being misconceived and baseless is liable to be rejected.
6. In this case no rejoinder has been filed by the Union in support of its claim.
7. Union has filed affidavit of worker Sri Pappu Lal Verma along with the claim statement but worker did not appear for his cross examination, therefore, his cross examination was made nil. Management has also not adduced any evidence.
8. Both the parties have not filed any documentary evidence.
9. I have heard the authorized representation for the anagement. None appeared on behalf of the uion to advance their arguments.

10. As it is evident from the record that union has raised the dispute on behalf of worker alleging that he was deprived of from the opportunity of promotion, therefore, heavy burden lies on union to adduce evidence in support of its case.
11. Union has not filed any documentary evidence and has only filed affidavit of worker prematurely along with the claim statement and worker himself absented for his cross examination therefore, his evidence cannot be read against the management.
12. As such there is no evidence on behalf of worker on the record and therefore, reference is bound to be decided against the Union.
13. Award is passed accordingly in the above terms.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर (उ.प्र.) के पंचाट (संदर्भ संख्या 84/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/28/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-12012/28/2012-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 84 of 2012

Between :

Sri Sandeep Kumar Savita,
S/o Late Siya Ram Savita,
R/o Village Utaripura, Post Uttaripura,
Distt. Kanpur Nagar(UP)

AND

The Regional Manager,
Central Bank of India,
117/H-1/240, Pandu Nagar,
Kanpur (U.P.)-208005

AWARD

1. Central Government, MOL, vide notification No. 12012/28/2012-IR (B-II) dated 21.09.2012 has referred the following dispute for adjudication to this Tribunal.
2. “Whether the action of the management of Central Bank of India, Kanpur in terminating the services of Shri Sandeep Kumar Savita S/o Late Siya Ram Savita workman with effect from 05.05.2007 is just fair & legal? What relief the workman concerned is entitled to?”
3. The case of the worker Sri Sandeep Kumar in short is that he was engaged by the opposite party bank for the first time at Extension Counter Bilhaur Inter College of Uttaripura Branch, Kanpur Nagar, on 20.01.2001 at the post of peon. It is alleged that the extension counter of Uttaripura Branch was opened in January 2001 and the worker was engaged at the time of opening of the branch and at the time of engagement of the worker he was told that since

the branch is new one and he will be soon regularized but he was not regularized in the service of the bank and he was terminated from the service from of the bank with effect from 05.05.07. The bank took from the worker all duties of peon during the business hours. The work and conduct of the worker was remained outstanding and satisfactory and he did not give any room for complaint. It is alleged by the worker that from the date of his engagement i.e. 22.01.01 till 04.05.07 and with effect from 05.05.07 he was removed from the service of the bank without any notice and notice pay which is nothing but a retrenchment in the eye of law. He has further stated that after his disengagement one Sri Ganga Singh Kushwaha was engaged at his place. As such the action of the opposite party is unfair labor practice and is not sustainable in the eye of law, therefore, he has prayed for his reinstatement in the service of the bank with full back wages and all consequential benefits.

4. Management bank has filed written statement in which it is stated that the worker by use and misuse of the provisions of Industrial Disputes Act and with a view to create a undue pressure on the bank has raised the present industrial dispute. There does not exist any relationship of master and servant between the bank and the worker, therefore, dispute is liable to be rejected. Considering the provisions of section 25-B of the Act which defines continuous service, the case of the worker does not cover under the perview of section 25F of the Act as the worker has never worked for 240 days of continuous service in the Extension counter of the bank. The worker was not engaged by the bank against any post nor was he ever issued any appointment letter by the bank. The opposite party bank has denied the entire claim of the worker in totality and the engagement of Sri Ganga Singh Kushwaha is not trustworthy and as such is liable to be rejected. Allegation of Unfair Labor Practice against the management is absolutely denied by the bank as the same has been raised by the worker to give color to his claim. The opposite party bank has therefore, prayed that there is no merit in the claim of the worker as such is liable to be rejected being devoid of merit.
5. Rejoinder statement has also been filed by the worker but nothing new has been narrated therein except reiterating the facts pleaded by him in the claim petition.
6. Worker *vide* list paper no. 8/1 has filed photocopies of letter dated 06.0-2.03, 28.02.0-3 and 18.09.03, photocopies of payment vouchers and photocopies of Dak register and in this way the worker in all has filed photocopies of 111 papers under the above heads.
7. The opposite party under the order of the tribunal dated 27.08.15 has filed the original of attendance register.
8. Worker in support of his case has examined himself as w.w.1 whereas the management has examined Sri Jogeshwar Bajpai its officer as M.W.1 in support of its case.
9. I have heard the arguments of both the sides and have also gone through the record of the case.
10. Authorized representative for the worker contented that the worker Sandeep Kumar Savita was appointed on the post of peon on 22.01.2001 in extension counter of the Bank at Bilhaur and he has continuously worked for six years in the bank and by oral order dated 5.05.2007, his services were terminated which is illegal and he has challenged his termination from the service of the Bank.
11. Authorized representative for the management contended that worker was never appointed on the post of peon nor has been issued any appointment letter nor was engaged for any post and there does not exit any relationship of master and servant between the bank and the worker.
12. Worker has examined himself as WW1 who has deposed in his cross-examination that his services were terminated on 5.05.2007. He has further admitted that he has not filed any documents to prove his working in the preceding years of his termination that is 2006-07. He does not remember whether he has filed documents to prove his continuous working of 240 days. He has admitted that he was not given any appointment letter. He has further admitted that the documents which he has filed is for the period January 2001 to August 2002 does not bear signatures of any officers of the Bank. He has also filed copy of Dak registers for the year 2003-04 on which there appears no signatures or seal of the Bank. He has further admitted in clear words that Bank has filed original Attendance Register for the period 2001-07 on his application for summoning it and after perusal of the register this witness has deposed that his name does not find place in the attendance register nor it bears his signature.
13. Management has examined Sri Jogeshwar Bajpai as MW1 who has deposed that in the extension counter besides branch manager and head cashier a sweeper used to work and he has denied that worker Sandeep Kumar Savita used to bring cash from main branch to extension counter and he was paid the expenses through vouchers.
14. One very important aspect of matter is that the worker if had been appointed as peon by the management, he should have been issued an appointment letter and he should have marked his attendance in the Attendance Register and he would have been paid his salary as an employee of the Bank but worker has admitted that he was not issued any appointment letter and his signature and name does not find place in the attendance register and thirdly he has not mentioned in his claim petition nor in his evidence as to how he has been paid salary of a peon.

15. He has deposed that he was being paid expenses through vouchers for the miscellaneous work that was performed by him but no such vouchers are filed. The worker has filed photocopies of same documents which does not bear signature or seal of the Bank authorities and are denied by the Bank management. Worker has not summoned any other witness of the management to prove these documents, therefore, these documents of which photocopies have been filed by the worker is of no help to him.
16. It may be possible that the worker might have worked as casual labor with the bank for which payment was done through vouchers. As discussed above, no such vouchers are filed by the worker. Secondly to have a right on working as a casual labor it is necessary for the worker to prove that he has worked for 240 days continuously preceding 12 calendar months from the date of termination but worker Sandeep Kumar Savita has admitted himself in his cross-examination that his services were terminated on 5.05.2007 and he has not filed any documents to prove his working in the year 2006-07. Further he has stated that he does not remember whether he has filed any documents to prove his continuous working for 240 days.
17. Thus from the above discussion the Tribunal is of the view that worker Sandeep Kumar Savita has failed to prove that he was appointed as peon in 2001 and his services were illegally terminated on 5.05.2007. Further he has failed to prove that he has worked continuously for 240 days.
18. Consequently considering the facts and circumstances of the case coupled with evidence of the party it is held that the worker is not entitled for any relief.
19. Award is made accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ संख्या 498/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/39/2002-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 498/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-12011/39/2002-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 06th July, 2018

Reference: (CGITA) No. 498/2004

The Chief Manager,
Bank of India,
Navrangpura Branch, Swastik Society Char Rasta,
Ahmedabad (Gujarat) – 380009

...First Party

V/s

The General Manager,
Bank of India Staff Union, C/o Bank of India,
Ahmedabad and Gujarat Branches, Bhadra,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : None

For the Second Party : None

AWARD (CORRIGENDUM)

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/39/2002-IR(B-II) dated 18.06.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of India through the Chief Manager, Ahmedabad in terminating the services of Shri Y.N. Pandit by way of Compulsory Retirement is legal, proper and justified? If not, what relief the workman concerned is entitled to?”

1. The reference dates back to 18.06.2002. The second party submitted the statement of claim Ext. 3 on 14.08.2002 and the first party submitted the written statement Ext. 8 in April, 2005. Since then the second party has been absent and has also not lead his evidence. Thus it appears that the second party has no willingness to prosecute the case.
2. Therefore, the reference in the absence of the evidence of the second party workman is disposed of with the observation as under: “the action of the management of Bank of India through the Chief Manager, Ahmedabad in terminating the services of Shri Y.N. Pandit by way of Compulsory Retirement is legal, proper and justified.”
3. The award passed on 03.01.2017 suffers with the clerical mistake that the name of workman Y.N. Pandit is wrongly typed which ought to have been **Y.N. Parikh**. Thus the name of the workman must be read as **Y.N. Parikh** in the award.
4. Thus the reference in the absence of the evidence of the second party workman is disposed of with the observation as under: “the action of the management of Bank of India through the Chief Manager, Ahmedabad in terminating the services of **Shri Y.N. Parikh** by way of Compulsory Retirement is legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर (उ.प्र.) के पंचाट (संदर्भ संख्या 43/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/3/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-12011/3/2011-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 43 of 2011

Between :

The General Secretary,
Union Bank Employees Union UP,

C/o 628/M-33, Murari Nagar,
Faizabad Road,
Lucknow.

AND

The General Manager (Field)
Union Bank of India, Sharda Towe Kapurthala Complex
Aliganj,
Lucknow (UP).

AWARD

1. Central Government, MOL, vide notification no. L-12011/3/2011-IR (B-II) dated 06.06.2011 has referred the following Industrial Dispute to this Tribunal for adjudication.
2. “Whether the action of the management of Union Bank of India, Lucknow in imposing penalty of stoppage of annual increment of Shri Iftikhar Ahmad Head Cashier working at Bahaadurganj Branch in Ghazipur Region is just , fair and legal ? What relief of the workman is entitled to?”
3. The workman while working as Head Cashier at Bahadurganj Branch of Union Bank of India in Ghazipur Region paid Rs 70,000/- against the document of Rs 10,000/- to Sri Ashok Rai, an Account holder in the Bank on 23.07.2001. The workman while tallying the cash found the shortage of Rs. 60,000/- and reported the matter to Branch Manager. The Branch Manager did not take action to get the money back from Sri Ashok Rai, and asked the workman to arrange Rs. 60,000/- to enable him to close the tallied cash in the Bank’s safe. The workman could not manage such huge amount of cash and so the shortage was adjusted by passing entry through Suspense Account. The workman was required to deposit the shortage in monthly installment of Rs. 15, 00/-from his monthly salary. Thus Bank was not at loss in any manner. The Bank, however, served first charge sheet without considering the matter seriously. The Bank issued second charge sheet and conducted departmental enquiry on the charges as mentioned in second charge sheet. The Enquiry Officer gave his finding and he as Disciplinary Authority imposed the punishment of stoppage of next annual increment with cumulative effect upon the workman. The workman being aggrieved submitted an appeal to Bank but it was not replied.
4. It is further alleged that worker was promoted to clerical cadre while worker was working as head cashier at Bahadurganj Branch on 23.07.2001 made the payment of 70,000/- against the documents of 10,000/-. At the relevant time branch was having two cash counter to handle the rush of customer but worker was asked to handle singly the entire job of cash receipt and cash payment. Worker reported the matter with Branch Manager with the name of customer to whom the wrong payment was made and instead of taking any action in the matter workman was made to adjust the shortage of cash in installment of Rs 15, 00/- from his monthly salary. The past service condition of workman remained satisfactory and enquiry officer-cum-disciplinary authority without considering this aspect treated the workman guilty of gross misconduct as well as minor misconduct. The punishment awarded to the worker is highly disproportionate considering the gravity of the proved misconduct therefore the punishment is liable to be quashed.
5. Lastly it has been prayed that the punishment order passed by disciplinary authority be quashed.
6. Management has filed written statement stating that considering the shortage of cash amount of 60,000/- a memorandum dated 22.03.2002 was issued to the worker proposing to impose punishment according to provisions to Bipartite settlement but the worker did not submit any reply to the memorandum despite getting opportunity. Worker was again issued a memo dated 23.05.2002 asking him to submit his reply failing which disciplinary action would be initiated against him. As such management decided to hold a regular inquiry against worker and he was issued charge sheet dated 18.09.2002 and Sri S N Mehra was appointed as Enquiry officer/disciplinary authority to hold enquiry. Enquiry Officer fix date of hearing and worker was intimated by the letter dated 15.11.2002. During the enquiry worker submitted before the enquiry officer that nobody is ready to defend him in the present enquiry. During the enquiry worker admitted his misconduct. Admission of guilt by the worker was made without any duress pressure, coercion or any promise during the course of the enquiry. Considering the version of worker made by him in the enquiry punishment of stoppage of next annual increment with cumulative effect was proposed and before passing final order worker was granted personal hearing by the disciplinary authority vide letter dated 19.02.2003. During the course of personal hearing worker again admitted his guilt before the disciplinary authority with prayer for taking lenient view in the matter on the ground that Rs 15, 00/- month is being deducted from his salary against excess payment made by him. Ultimately disciplinary authority pass final order on 28.02.2003 against which no appeal was made by the worker.
7. Lastly management has prayed the claim of the union is liable to be rejected being devoid of merit.
8. Union has also filed rejoinder but nothing new has been pleaded therein.

9. Bank has filed photocopy of charge sheet dated 18.09.2002, photo copy of enquiry proceedings dated 9.1.2003, photocopy of letter dated 9.1.2003, photocopy of findings of enquiry officer dated 15.01.2003, photocopy of proceedings of personal hearings dated 27.02.2003 and photocopy of final order dated 28.02.2003.
10. Union has examined the worker Sri Iftakar Ahmad as WW1 in support of its case.
11. Representative for the management on 7.06.18 made an endorsement on the order sheet that management does not want to adduce any evidence in the present case.
12. I have heard the representative of both sides at length and perused the record of the case carefully.
13. Authorized representatives for both the parties have admitted that it is a case of departmental inquiry in which management has imposed penalty of stoppage of annual increment on Sri Iftikhar Amhad, Head Cashier of the Branch. They also agreed that the powers conferred upon the tribunal under section 11-A of the Industrial Disputes Act cannot be exercised in this case as it is not a case of termination, removal or discharge of the worker from the service of the bank.
14. On perusal of record it appears that charge sheet was given to the worker for the misconduct that on 23.07.01 worker made cash payment of Rs.70, 000/- instead of Rs.10,000/- to Sri Ashok Kumar Rai as per with drawl form which resulted into excess payment of Rs.60000/- and the shortage of cash was adjusted by debiting suspense account and worker has also admitted his negligence. During the inquiry the worker has also moved an application before the Enquiry Officer/Disciplinary Authority on 09.01.03 admitting his guilt and stating that due to excess work he made excess payment of Rs.60000/- to Sri A K Rai and also stating that he is admitting the charges voluntarily without any pressure and unconditionally and requested to take lenient view regarding the punishment as he has a large family and he has no other source of income except this service and salary.
15. Thereafter Sri S N Mehra, EO/DA, in his report dated 15.01.03 has found the worker guilty in view of the admission of charges and proposed stoppage of next increment with cumulative effect and an fixed 27.02.03 for personal hearing of Sri Ahmad. During the course of personal hearing the worker admitted that he has already confessed the allegation voluntary and requested to take lenient view in the matter. After this Sri S N Mehra, disciplinary authority passed final order dated 28.02.03 confirming the proposed punishment of stoppage of one annual increment with cumulative effect for proved gross misconduct and warning for proved minor misconduct.
16. Worker has examined himself before the tribunal and in his cross examination he has deposed that this case was filed by General Secretary of the Union but he has not given any evidence in this case He has admitted his signature on paper no.11/3 memorandum issued by the disciplinary authority on 23.05.02 and has also put his signature on paper no.11/4-6 proceedings of the inquiry and on paper no.11/7 which is a letter given by him confessing the guilt voluntarily and also admitted his signature on the personal hearing granted by the disciplinary authority paper no.11/11-12 and has further admitted his in his cross examination that it is correct that he has admitted his guilt through paper no.11/7 and further deposed that in para 8 of the claim petition he has admitted the charges and he was afforded full opportunity of his defense during the domestic inquiry. He further admitted that he has not filed any appeal against the final order passed by the disciplinary authority on 28.02.03.
17. From the above discussion it is evident that worker was given full opportunity of his defense by the inquiry officer during inquiry and further he has tendered unconditional and voluntarily confessed the charge and in his letter confessing the charges and during the personal hearing worker has requested to take lenient view and the management considering the gravity of charge has already taken a lenient view by imposing penalty of stoppage of one increment with cumulative effect. It is also clear that there is no legal flaw in the proceedings of inquiry and it was done according to rules of natural justice fairly and moreover the worker has not filed any appeal against the order of punishment.
18. Hence considering the overall aspect of the matter the tribunal is of the view that the disciplinary authority has already taken a lenient view while imposing the punishment upon the worker and the action of the management in imposing the punishment upon the worker is just fair and legal and does not require any interference.
19. Reference is therefore, decided against the union and in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, कानपुर (उ.प्र.) के पंचाट (संदर्भ संख्या 112/13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12011/56/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 112/13) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-12011/56/2013-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 112/13

Between :

The State Executive Committee Member,
U.P. Bank Workers Organization, 3/13,
Mathura Nagar, Aligarh.
ALIGARH (U.P.)

AND

1. The Regional Manager,
Central Bank of India, Regional Office,
37/2/4, 2nd Floor, Sanjay Place, Agra,
AGRA (U.P.)-282002.
2. The Branch Manager,
Central Bank of India, Jattari,
Distt-Aligarh (U.P.)
ALIGARH(U.P)

AWARD

1. Central Government, MOL, *vide* notification no. L-12011/56/2013-IR (B-II) dated 08.08.2013 has referred the following Industrial Dispute to this Tribunal for adjudication.
2. “Whether the action of the management of Central Bank of India in taking work from Shri Papoo Lal Verma, S.W.O beyond working hours and not making payment of overtime to him for the period from November, 2010 to February, 2012 is just, fair and legal? What relief the workman concerned entitled to?”
3. The case set up by the union on behalf of the worker in short is that in the bank there is provision for making payment of over time in case any worker works beyond the duty hours and the branch manager of the branch where the worker was posted under his oral instructions took the work of over time beyond the normal working / business hours from the worker and the working of the worker was being supervised and controlled by the branch manager and it was the obligation of the branch manager to ensure payment of overtime to the worker for work done by him beyond the normal business hours in the branch. Accordingly the union has prayed that the worker be allowed payment of over time due by him in the branch.
4. Management has filed written statement denying the entire claim of the union stating that the claim of union is not tenable in the eye of law on the ground that no work had been taken from the worker beyond the normal banking hours. The branch manager Jattari Branch has made it clear as to under what circumstances over time is payable but this fact has deliberately been suppressed by the union in his claim petition. Neither any direction was issued by the bank nor was any certificate annexed by the union along with the claim which was issued as per bank's norms to the worker regarding overtime. The claim of the worker is based on whimsical grounds and therefore, is liable to be rejected.
5. Union has filed rejoinder but nothing new has been stated therein.

Worker has filed copy of application given to the management for payment of Overtime dated 4.09.12, 6/4, and replies of management dated 07.09.2012, 6/4, stating that he has worked for over time on his own will without any office order, 6/5, and copies of attendance sheet, 6/6-34 and calculation chart of over time, 6/35-45.

6. Management has filed copy of instructions issued by the management for payment of over time through list dated 23.10.15.

Worker has examined himself as w.w.1 and in his cross examination he stated that Regional Manager had not issued any office order in writing for his overtime duty and he has done over time duty on the oral instructions of the branch manager during the period November 2010 to 2012.

7. His cross examination was deferred for next date, but he did not turn up, therefore, his cross examination was made nil.

Management has not adduced any oral evidence.

8. I have heard the authorized representative for the management. None appeared on behalf of worker to submit arguments.

9. I have also perused the record.

10. From the own admission of worker in his cross examination it is clear that he was not given any written direction or office order by branch manager for performing over time and it appears that he has done over time on his own will. Secondly he absented himself from his further cross examination and ultimately it was made nil. On this score also his evidence cannot be read against the management.

11. As such union has failed to prove the claim raised on behalf of the worker and worker is not entitled for any relief.

Award is made accordingly against the Union/worker and in favor of management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर (उ.प्र.) के पंचाट (संदर्भ संख्या 32/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/100/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/12) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 06.08.2018.

[No. L-12012/100/2011-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 32/12

Between :

Shri R.K. Sood,
39, Basant Vihar, Kamal Nagar,
AGRA (U.P.)

AND

The Dy. General Manager,
UCO Bank, R.O. Skylark Building,
28 Naval Kishore Marg,
Lucknow (U.P.)

AWARD

1. Central Government, MOL, vide notification no. L-12012/100/2011-IR (B-II) dated 12/19.04.2012 has referred the following Industrial Dispute in this Tribunal for adjudication.
2. 'Whether the action of the management of UCO Bank, Lucknow in imposing the punishment dismissed from the bank services w.e.f. 02/01/2009 ' vide order dated 02.01.2009 upon Shri R.K.Sood, Special Assistant, posted at Belanganj, Agra is legal and just? To what relief the concerned workman is entitled to?'
3. The case of worker in short is that the worker while working as special assistant at Branch office Belanganj, Agra was suddenly placed under suspension vide order dated 14.05.2007 stating that some serious irregularities have been committed by him ignoring the fact that entire service career his work and conduct remained ever satisfactory, and no reasons were disclosed in the order of suspension. It is further alleged that the Branch Manager Sri Sukhbinder Singh on 11.07.2007 lodged an FIR against the workman under section 406 and 420 of IPC at PS, Chatta, district Agra alleging there in that in totality there had been irregularities in 25 accounts of the account holders. Opposite party issued a charge sheet dated 09.04.2008 belatedly on 9.04.2008 where in allegation of forged transaction were leveled in only 5 accounts and these accounts are different than 21 accounts mentioned in the charge sheet. Worker specifically denied the allegation leveled against him vide his letter dated 30.04.2008 which were not found satisfactorily and the management the same day appointed enquiry officer and presenting officer. Presenting Officer was under the supervision and control of the disciplinary authority. It is further alleged that the enquiry officer conducted the enquiry in gross breach of rules of natural justice in as much as copies of documents relied upon in support of charges were neither provided to the worker nor the worker was provided adequate opportunity to cross examine the witness of the management despite repeated request made by worker in this behalf and also management without providing opportunity; to the worker to adduce his evidence in defense concluded the enquiry ex parte in which out of 5 charges only four charges were found proved against the worker. As regards the report of enquiry officer is concerned it has been alleged that the findings rendered by enquiry officer in his report is based on conjectures and surmises without proper appreciation of evidence available on the record of domestic enquiry. Worker made specific request the report of enquiry officer be quashed by disciplinary authority and de-novo enquiry be ordered in the matter so that worker be able to present his defense but without considering the request of the worker in a prejudicial manner the disciplinary authority by order dated 2.01.2009 dismissed the workman from the service of the Bank which is unfair and unconstitutional which in itself is not clear still. The punishment order was implemented against the worker which is glaring example of unfair labour practice. Thus the dismissal order dated 2.01.2009 passed by the disciplinary authority is wholly unfair, unconstitutional and against the social/ natural justice as such liable to be quashed. Appeal preferred by worker against his dismissal order too was not found favour at the hands of the appellate authority who vide his order dated 5.03.2009 confirmed the punishment order without application of mind.
4. It is also pleaded by the worker that none of the customer of account holders mentioned in charge sheet were called upon by the enquiry officer in witness box as such entire enquiry was concluded on whimsical grounds by the enquiry officer. He was also not paid sustenance allowance as per rule and request made by worker in this behalf was rejected which prejudicial to the interest of the worker.
5. It is also alleged by the worker that due to illegal action on the part of management the worker has become jobless and despite his best effort he could not search appropriate job for his livelihood and as such worker is not in position to discharge his family obligation for which the management is responsible.
6. On the basis of above pleading the worker has prayed that the punishment order dated 2.01.2009 be quashed and he be reinstated in the service with full back wages, continuity of service and with all consequential benefits attached with the post.
7. Management has filed written statement alleging that worker R K Sood has committed certain irregularities/fraud while working as special assistant at Belanganj Branch of UCO Bank, Agra. A FIR to this effect was lodged on 11.07.2007. As a matter of fact charges leveled against worker were grave in nature and he remained in police custody for some period. Worker was suspended vide order dated 14.05.2007. He was issued charge sheet dated 9.04.2008 for committing serious misconduct, irregularities and fraud against the bank. Worker in an unauthorized manner debited various amounts to the accounts of different parties and used the amount to his own benefit and had made several transactions with ulterior motive and with the intention to the fraud the bank for his personal gains. He also failed to perform his duty with honesty and committed acts prejudicial to bank interest involving the bank in serious loss and the act of worker is an act of misconduct under clause 5(j) of memorandum of settlement on disciplinary action procedure for workmen staff dated 10.04.2002.
8. Sri R K Sood was required to submit his written explanation and he submitted his written reply dated 30.04.2008 where in no specific explanation to the allegation was given by the worker except denying the charges which was not found satisfactory and it was decided by the bank to hold departmental enquiry against the worker. Enquiry officer and presenting officer was appointed by the disciplinary authority vide notification dated 30.04.2008.

Enquiry officer has conducted the domestic enquiry on various dates strictly with the accordance of the rules of natural justice. The enquiry was commenced from 26.05.2008 and concluded on 4.08.2008. Worker attended the enquiry with his defense representative only during management presentation up to 12.08.2008 where after R K Sood and his defense representative did not attend the enquiry proceedings in order to defend his case taking plea that the FIR lodged against worker is related to above charge sheet. During enquiry worker produced medical certificates for different ailment just to delay the enquiry proceedings. He also requested that enquiry proceedings may be postponed up to decision of the court in respect of FIR filed by bank where writ petition is filed by R K Sood. The request of the worker to postpone enquiry proceedings was overruled on the ground that the allegation of charges are different than that of allegation leveled in FIR. In the above circumstances enquiry proceedings have been concluded ex parte by giving full opportunity to the worker of his defense. The worker by letter dated 13.09.2008 instead of submitting written brief in his defense has again requested for producing his defense after the decision of Hon'ble High Court, Allahabad which was disallowed as subject matter pending before Hon'ble High Court was different from the charge sheet. Inquiry Officer after concluding his enquiry submitted his report dated 23.09.2008 along with complete enquiry proceeding relating to the worker before the discipline authority. Worker was supplied a copy of enquiry report inviting his comments but instead of offering his comments he desired to reopen the enquiry from the stage he could not attend the enquiry on the ground of his illness. His request was made by him through his letter dated 13.10.2008. Worker was given last opportunity to submit his comments vide letter dated 16.10.2008 but worker has not submitted any comments.

9. The enquiry officer found charges leveled against Sri R K Sood fully established in the domestic enquiry. Worker was given full, fair and reasonable opportunity to defend his case in the enquiry by cross examining the witnesses and to examine his own witness and documents in the enquiry. The disciplinary authority issued tentative order proposing infliction of punishment upon the worker. He was given an opportunity of personal hearing regarding findings of enquiry officer and proposed final order. Disciplinary authority considering the request of the worker once again perused the entire records of enquiry and found that the report of enquiry officer was based on evidence on record of the enquiry. It is also pleaded that free, fair and regular enquiry was held against worker.
10. It is also pleaded that the action of management against the worker was fully legal fair and justified and was in the interest of the Bank.
11. Worker has filed rejoinder but nothing new has been pleaded there in except reiterating the pleadings of the claim petition.
12. Management per list dated 30.09.2013 has filed complete record of enquiry running into 14 documents mentioned in the list. In the instant case preliminary issue regarding legality and fairness of the enquiry was framed on 19.06.18 by this Tribunal but AR for the worker moved an application admitting that domestic enquiry held by the management is legal and fair. Accordingly it is held that the enquiry against the worker is fair and legal and suffers from no infirmities.
13. I have heard the arguments of both the parties and perused the record of the case.
14. Before recording the findings by this Tribunal it is essential to refer the allegation of charges leveled against the worker vide charge sheet dated 9.04.2008 which are as under:-
 - a) On 06.11.03 a sum of Rs. 11038/- was debited in an unauthorized manner to SB A/C No. 9252 of Sri Narendra Kumar Maheshwari by way of Cheque No. 063764 (entered in the system as a withdrawal form) and credited SB A/C No. 4955 in your name jointly with Madhu Sood. Cheque No 063764 used in the transaction was issued in your SB A/C No. 2720 (Joint A/C). Signature of Sri Narendra Kumar Maheshwari on Cheque was fake and the Cheque was passed by you fraudulently.
 - b) On 25.11.03, a sum of Rs. 3000/- was debited in an un-authorized manner to SB A/C No. 9252 of Sri Narendra Kumar Maheshwari by way of a withdrawal form pertaining to your Account No. SB 3104. This withdrawal form was passed by you and the payment was also received by you. There was no balance in your SB A/C 3104 at that time.
 - c) On 17.06.04, a sum of Rs. 20000/- was debited in an un-authorized manner to SB A/C No. 6771 of Sri Prabhat Kumar Maheshwari by way of a withdrawal form and amount was paid in cash. The withdrawal form was bearing fake signature of account holder which was passed by you.
 - d) On 04.10.04, you debited a sum of Rs. 21,000/- in an un-authorized manner to SB A/C No. 9252 of Sri Narendra Kumar Maheshwari. You made vouchers and passed the same. Transactions also made and passed by you in the system. Although Credit voucher was made in the name of Seema Maheshwari but it was credited by you in your joint Account No. SB 3104.
 - e) On 27.05.2006, a sum of Rs. 25,000/- was debited in an un-authorized manner to SB A/C No. 9587 of Sri Bishan Swarup Bansal by way of a withdrawal form bearing fake signature of the drawer. This was passed as well as authorized in the system by you.

15. Now it is to be seen on the basis of re-appreciation of evidence collected by the enquiry officer during the course of domestic inquiry and re-appreciation of findings recorded by the enquiry officer under powers conferred upon the tribunal under section 11-A of Industrial Disputes Act, 1947, as to whether the charges have been proved against the worker or not as also whether the punishment awarded to the worker is shockingly disproportionate to the charges proved before this Tribunal and it requires interference of the tribunal or not.
16. On perusal of enquiry proceedings, evidence collected by the enquiry officer in the inquiry and findings of the enquiry officer by means of which he found 4 charges proved and charge no.5 as not proved and on the basis of his report punishment awarded to the worker commensurate with the allegations of charges.
17. During the course of domestic inquiry, it appears that the worker has been given charge sheet on 5 counts and after domestic inquiry worker has not been found guilty for charge no.5 by the enquiry officer as well as by the disciplinary authority and he has been found guilty for remaining 4 charges and after issuing show cause notice disciplinary authority inflicted punishment of dismissal without notice upon the worker, but surprisingly as also admitted by the authorized representative for the management, the management the money alleged to be received by the worker by fraud was not recovered from the worker not the disciplinary authority passed any order for recovery of the alleged amount.
18. During domestic inquiry management examined two witnesses by name Sri M P Jain Assistant Manager, and Sri Mukesh Chandra Srivastava.
19. Sri Mukesh Chandra Srivastava during his cross examination before the inquiry officer has clearly admitted that he had no personal knowledge as to whether any irregularity was found in the account of those account holders whose money is said to have been transferred by the worker in his account.
20. M.W. 1 Sri M P Jain, has also admitted that cheque no. 0637612780, was issued in favor of worker by Sri R.K Sood. It is also deposed by the witness that the cheque and withdrawal form were passed by the worker. He also deposed that signatures of the account holders did not tally with the signature made on cheque or withdrawal forms but enquiry officer has neither summoned the account holders during inquiry to verify their signatures nor the enquiry officer has made any efforts to call report from the hand writing expert. He has also deposed in clear terms that he cannot say as to which officer has confirmed the debit voucher. It also shows that some of the officers have confirmed the debit vouchers payment but this witness has deliberately not exposed their names during the domestic inquiry. The witness was put to a specific question whether any of the 5 account holders have made any oral or written complaint with the bank authorities and the witness has shown is ignorance then again he has admitted that that he knows Sri P K Maheshwari and V. S. Bansal, but he has not discussed about the undue irregularity in their accounts.
21. Sri Jain in his evidence has also admitted that the worker R K Sood was the introducers of Sri P K Maheshwari in his saving bank account no. 6771.
22. Thus it is evident that the worker was knowing Sri Maheshwari and he has introduced him in opening of the account as account holder, but as Sri Maheshwari has never made any oral or written complaint to the bank nor the authorities have ever discussed with them about any irregularity made in their account and also Sri M K Srivastava M.W.2, stated that no irregularity in the account of account holder was in his knowledge, therefore, issuance of charge sheet to the worker appears to be not legal and valid in the absence of oral or written complaint in this regard by the account holder.
23. Therefore, from the above appreciation of evidence it is abundantly clear that the worker knew Sri Maheshwari and he has introduced him in the process of opening the account no. 6771. Account holder had never made any oral or written complaint to the bank authorities nor the authorities of the bank have ever discussed with them about any irregularity made in their account and also Sri M K Srivastava, M.W.2 stated that no irregularity in the account of the account holder was in his knowledge.
24. Besides this the bank authorities have not taken any steps for recovery of the amount alleged to have been misappropriated by the worker by transferring the amount in his account.
25. Therefore, from the above conduct of the responsible authorities of the bank shows that they have initiated the disciplinary proceedings against the worker on the basis of conjecture and surmises without any complaint from the account holder suo-moto and punished the worker for dismissal without notice without recording the statement of any of the account holders during the course of domestic inquiry. Therefore, the entire exercise in the name of disciplinary action against the worker Sri R K Sood appears to be wholly illegal and without any basis.
26. Therefore, from the overall appreciation of evidence available on the record of domestic inquiry, the tribunal is of the firm opinion that none of the charges are found proved against the worker, but their appears serious negligence on the part of the worker that he has directly received and passed the cheques and withdrawal forms as cheques and withdrawal forms as per banking practice are supposed to have been received by the cashier and it was the

duty of the cashier to send these instruments to the worker for passing the same and after passing it they should have been returned to the cashier for debiting and crediting of the amount.

27. In view of above discussion and reappraisal of the evidence available in domestic inquiry file, the tribunal is of the considered view that the worker is found guilty of negligent in discharge of his official obligation as he has over passed the cashier and dealt with the instruments directly and it is the only misconduct which is found proved against the worker.
28. Now after reappraisal of evidence question arises before the tribunal as to whether the punishment of dismissal without notice awarded to the worker commensurate with the proved charge before the tribunal or not and it requires interference at the hands of the tribunal or not.
29. The tribunal after giving its anxious considerations to the evidence and circumstances of the case appeared in the domestic inquiry is of the opinion that the punishment awarded to the worker by the disciplinary authority is shockingly disproportionate as no man having ordinary prudent mind would come to the conclusion as arrived by the enquiry officer and disciplinary authority especially in the circumstances when charges have been found as not proved by the tribunal.
30. It is admitted to both the parties that the worker has already crossed the age superannuation, therefore, the punishment of dismissal from the service of the bank without notice awarded to the worker is set aside and in place of it the tribunal award punishment of compulsorily retirement of the worker with superannuation benefits, like pension, gratuity, leave encashment and provident fund etc., as are payable to him under rules, in exercise of its powers under section 11-A of Industrial Disputes Act, 1947, from the date of passing of the punishment of dismissal from service without notice by the disciplinary authority, to meet the ends of justice. Worker will not be entitled for any back wages.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 78/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 06.08.2018.

[No. L-39025/01/2017-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 29th day of June, 2018

INDUSTRIAL DISPUTE L.C. No. 78/2006

Between :

Sri M. Raju,
S/o M. Yadagiri,
2-3-647/B/2/6, Premnagar,
Amberpet, Hyderabad

...Petitioner

AND

1. The Zonal Manager,
Central Bank of India,
Kothi, Bank Street,
Hyderabad
2. The Chief Officer,
Personnel,
Central Bank of India,
Kothi, Bank Street,
Hyderabad

...Respondents

Appearances:

- For the Petitioner : M/s. N. Vinesh Raj & T.V. Ravinder Kumar, Advocates
For the Respondent : M/s. Ch. Siva Reddy & T.G. Prasad Reddy, Advocates

AWARD

Sri M. Raju who worked as Car Driver (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents seeking for reinstatement, consequently directing the Respondents to grant all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deem fit.

2. The averments made in the petition in brief are as follows :

The Petitioner workman was appointed as a Car Driver from 1.10.1994 and entrusted to work with the Assistant General Manager of the Respondents' bank. His last drawn salary was Rs.3,775/-. He worked under several Assistant General Managers. The workman's salary used to get credited into his Bank account. He was issued with uniforms as well as service certificate. The Petitioner workman used to maintain Log Book which shows that he used to drive the vehicle of the Respondents' Bank, but as and when required, the Petitioner used to serve under officers of the Respondents' bank. It is submitted that the Respondents are treating the services of the Petitioner workman as personal driver which is not true and the initials of the officers can clearly be seen in the log book. The Petitioner served under Smt. Soujanyaavathi and Sri Rama Rao, Scale-II officers to Amanpadi, Tlq, Ibrahimpatnam for official work for inspection of a rice Mill and also returned and continued to work, suddenly the services of the Petitioner were terminated from 1.3.2006. During his tenure i.e., from 1.10.1994 to 28.2.2006 the Petitioner represented several times for regularization of his services, but instead of regularization he was orally terminated from service without following the provisions of the Labour Laws and Sec.25(F) of the Industrial Disputes Act, 1947. Other casual employees who were subsequently regularized, juniors to the workman are still continuing in service. It is further stated that after termination of his services, the workman issued a demand notice to the Respondents which was acknowledged by them but it was in vain. The Petitioner couldn't get any alternate employment till date inspite of all his efforts. Hence, the Petitioner has prayed to direct the Respondents to reinstate him into service with full back wages, continuity of service and all other attendant benefits.

3. The Respondents filed counter with the averments in brief which runs as follows:

The averments of the Petitioner workman are totally denied. It is stated that the Respondents' bank is a public sector bank having several branches in the country and one such branch is at bank Street, Koti, Hyderabad which is known as Corporate Finance branch and it is headed by the Asst. General Manager. As per rules, the executives and some of the officers in the senior management are provided with car facility for the purpose of office use. The said officers/executives shall drive the cars or have their own personal drivers to drive the said cars and the amount paid to the drivers reimbursed to the said executives by way of a perquisite. Accordingly, the Petitioner workman was engaged by the then Asst. General Manager as his personal driver on payment of salary of Rs.3,775/- pm and it is paid by the Asst. General Manager which was reimbursed by the bank to the said Asst. General Manager by way of perquisite. No recruitment rules are followed while engaging these personal drivers as they are not employed by the bank. The Petitioner was also engaged by the then Asst. General Manager. The personal drivers of the executives were also supplied with the uniform for the purpose of maintaining dress code and dignity of the office of the officer concerned. The workman was issued with identity card for specific purposes, as he has to move with the concerned executive at certain places where it requires proof of identity etc. and the identity card contains no employee number as well. It is submitted that in the service certificates so issued in favour of the workman it was clearly mentioned that he was the personal driver of the Asst. General Manager. He can not claim regularization with the support of the identity cards, service certificates and uniform etc. as he was not appointed by the bank through recruitment process. Since he was not employed or engaged by the Respondent bank, the question of his working more than 240 days in a year continuously from 1994 is not relevant or legal. It is true that the Petitioner workman was engaged by the Asst. General Manager from

1.10.1994 to 28.2.2006 as his personal driver and the salary was paid to the Petitioner by the said Asst. General Manager, and during this period he might have made representations for regularization or for his absorption in the bank service. There is no employer and employee relationship between the bank and the drivers, so engaged by the said executives for whom they used to get the reimbursement by way of allowances. Since, the workman was never engaged by the Respondents' bank, the question of regularization/absorption in the bank service does not arise. The Government of India has also clarified the position vide their circular F No.9/5/92-IR dated 23.6.1997, that personal driver engaged by the executives of the bank can not be regularized as there is no employer and employee relationship between the bank and the drivers so engaged by the executives. It is submitted that the Petitioner was engaged by the then Asst. General Manager as his personal driver in his personal capacity and he has got every right to dispense with the service of the Petitioner. Accordingly, the services of the Petitioner were dispensed with by the said Asst. General Manager with effect from 1.3.2006 and it does not amount to retrenchment under the Industrial Disputes Act, 1947. As such, the termination of the workman is not attracted by any of the provisions of the labour laws much less Section 25F of the Industrial Disputes Act, 1947 and he is not entitled for reinstatement as claimed by him.

4. **In view of the pleadings of both the sides the following points are to be determined :**

- I. Whether the action of the Respondents' management in terminating the services of the Petitioner Sri M. Raju is legal and justified?
- II. Whether the provisions of Sec.25F of the Industrial Disputes Act, 1947 are complied or not before termination of the Petitioner?
- III. What other reliefs the Petitioner Sri M. Raju is entitled to?

5. I have already heard the Learned Counsels for both the sides in this matter.

6. The Petitioner examined himself as WW1 and marked some documents as Exs.W-1 to W-14. The Respondents examined Sri B. Venkata Ramana, the Senior Manager on their behalf as MW1 and marked two documents on their behalf as Ex.M1 and M2.

7. The Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner workman was appointed as a car driver under the Respondents' management from 1.10.1994 and entrusted to work with the Asst. General Manager. He was getting salary regularly from the Respondents' bank and his last drawn salary was Rs.3775/-. He worked under several Asst. General Managers and his monthly salary was credited into his bank account. He was issued with the uniform as well as service certificates from time to time. The Petitioner workman used to maintain log book which shows that he used to drive vehicles of the Respondents' bank but not for a particular officer, as and when required. The Petitioner used to work under the officers of the Respondents' bank. It is further contended that the Respondents are treating the services of the Petitioner as a Personal Driver, which is not true because the initials of the officers given in the log book can clearly show the status of the Petitioner workman. The Petitioner has served under Smt. Soujanyaavathi and Sri Rama Rao, Scale-II officers to Amanpadi, Tlq, Ibrahimpatnam for official work for inspection of a rice Mill and also returned and continued to work. It is also contended that suddenly the services of the Petitioner were terminated from 1.3.2006, but during his tenure i.e., from 1.10.1994 to 28.2.2006 the Petitioner made several representations to the Respondent's Bank on many occasions for regularization of his services, but instead of regularization he was orally terminated from service without following the provisions of the Labour Laws and Sec.25(F) of the Industrial Disputes Act, 1947. It is further contended that all other casual employees who were subsequently regularized, are juniors to the workman and they are still continuing in service. It is also contended that after termination of his services, the workman issued a demand notice to the Respondents which was acknowledged by them, but no action was taken from the side of the Respondents. The Petitioner workman could not get any alternative employment till date inspite of all his efforts till date. Under the above circumstances, the Learned Counsel for the Petitioner submitted that a direction may be given to the Respondents to reinstate the Petitioner into service with full back wages, continuity of service and all other attendant benefits.

8. On the other hand the Learned Counsel appearing on behalf of the Respondents while denying the facts contended by the Learned Counsel for the Petitioner argued that the Respondents' bank is a public sector bank having several branches in the country and one such branch is at bank Street, Koti, Hyderabad which is known as Corporate Finance branch and it is headed by the Asst. General Manager. As per rules, the executives and some of the officers in the senior management were provided with car facility for the purpose of office use. The officers/executives shall drive the cars or have their own personal drivers to drive these cars and the amount paid to the drivers is reimbursed to the said executives by way of perquisite. Accordingly, the Petitioner workman was engaged by the then Asst. General Manager as his personal driver on payment of salary of Rs.3,775/- pm and it is paid by the Asst. General Manager himself which was reimbursed by the bank to him by way of perquisite. No recruitment rules are followed while engaging these personal drivers as they are not employed by the bank. The Petitioner was also engaged by the then Asst. General Manager. It is also argued that the personal drivers of the executives were also supplied with uniform for the purpose of maintaining dress code and dignity of the office of the officer concerned. But the workman was issued with identity card for specific purposes, as he has to move with the concerned executive at certain places where it requires proof of

identity etc. and the identity card contains no employee number as well. It is further argued that in the service certificates so issued in favour of the workman it had clearly mentioned that he was the personal driver of the Asst. General Manager and he can not claim regularization with the support of such identity cards, service certificates and uniform etc., as he was not appointed by the bank by recruitment process. Since the workman was not employed or engaged by the Respondents' bank, the question of his working more than 240 days in a year continuously from 1994 is neither relevant nor illegal. He also argued that the Petitioner workman was engaged by the Asst. General Manager from 1.10.1994 to 28.2.2006 as his personal driver and the salary was paid to the Petitioner by the said Asst. General Manager, and during this period he might have made representations for his regularization or for his absorption in the bank service. There is no employer and employee relationship between the bank and the drivers, so engaged by the said executives for whom they used to get reimbursement by way of allowances. Since, the workman was never engaged by the Respondent bank, the question of regularization/absorption in the bank service does not arise. The Government of India has also clarified the position vide their circular F.No.9/5/92-IR dated 23.6.1997, that personal driver engaged by the executives of the bank can not be regularized as there is no employer and employee relationship between the bank and the drivers so engaged by the executives. It is further argued that the Petitioner had been engaged by the then Asst. General Manager as his personal driver in his personal capacity and he has got every right to dispense with the service of the Petitioner. Accordingly, the services of the Petitioner were dispensed with by the said Asst. General Manager with effect from 1.3.2006 and it does not amount to retrenchment under the Industrial Disputes Act, 1947. As such, the termination of the workman is not attracted by any of the provisions of the labour laws much less under Section 25F of the Industrial Disputes Act, 1947 and he is not entitled for reinstatement as claimed by him. With these submissions, the Learned Counsel for the Respondent submitted for dismissal of the claim of the Petitioner and as such the workman is not entitled to get for any relief as claimed in his claim petition and the claim petition is liable to be dismissed.

9. On the contrary, the Learned Counsel for the Petitioner workman contended that the allegation of the Respondent management is that the Petitioner was a personal driver of the Asst. General Manager but how from 1.10.1994 to 28.2.2006, the Petitioner was the only driver who worked under several Asst. General Managers. Whether the job of the Asst. General Manager is transferable or not. If the Petitioner workman was working as a personal driver how he used to work there from 1994 to 28.2.2006, why every Asst. General Manager opted to engage the Petitioner as their personal driver. If the Petitioner workman is a personal driver, there is no necessity of issuance of any identity cards or uniform in his favour. Why the Petitioner workman was issued with identity card and uniform. The Petitioner was given salary under Ex.W2 to W11, through Bank Account. If personal driver why salary was paid as per his convenience to his bank account. Further more, the service certificates issued by the officers of the bank vide Ex.W12 shows that the Petitioner was working regularly under the Asst. General Managers, not under a single Manager. Ex.W13 has been given by senior Manager who could provide uniform to the driver. If the Petitioner was working in the personal capacity as a driver, then why the Senior Manager recommended to issue uniform to the Petitioner. The Petitioner was maintaining log book under Ex.W14 which goes to show that the Petitioner was regularly performing his duty. The Learned Counsel for the Petitioner also contended that working of the Petitioner in a particular place for a long time, maintenance of log books, issuance of identity card, uniform as well as service certificates and payment of salary through bank account, implies that, the Petitioner is working regularly and continuously under the Respondents' bank. But suddenly the Respondent management terminated the services of the Petitioner without following the provisions required under Sec.25F of the Industrial Disputes Act, 1947.

10. In fact, MW1 in his cross examination is unable to file any document to show how the Petitioner was given salary through bank. He has admitted that the Petitioner was provided with uniform and identity card. The Respondent bank has not regularized the services of the juniors of the Petitioner. Therefore, MW1 has not given any satisfactory explanation in his cross examination about how the service of the Petitioner was taken/terminated.

11. On consideration of the rival contentions of both the sides it is noticed that admittedly, the Petitioner was working under the Asst. General Manager of the Respondents' bank from 1.10.1994 to 28.2.2006. The Respondents' bank has nowhere stated that the post of the Asst. General Managers is not transferable and one Manager is continuing in the same post from 1.10.1994 to 28.2.2006. Therefore, it goes to show that so many Asst. General Managers have worked under the Respondents' management in between 1.10.1994 to 28.2.2006 and the Petitioner used to work under them during that period. If the Petitioner was a personal driver, someone might have dispensed with his service on the event of his transfer. But, when the Petitioner has worked continuously under the same Asst. General Managers, who has been posted from time to time, it can not be stated that the Petitioner was a personal driver of any one Asst. General Manager. Further more, issuance of identity card, uniform, service certificates in favour of the Petitioner also clearly prove that the Respondents have utilized the services of the Petitioner workman for a long period. Moreover, payment of salary through account of the Petitioner also prove that the Petitioner was in regular service under the Respondents' bank. The service of a driver is perennial in nature and the Petitioner has worked for more than 240 days in a year. When the Petitioner workman has rendered continuous service to the officers of the Respondents' bank, when he has been terminated from service, he should be terminated by following the principles laid down under Sec.25F of the Industrial Disputes Act, 1947. In fact, without following due procedure, the Respondents' management has terminated the service of the Petitioner workman. Admittedly, no appointment order has been given to the Petitioner. But when the

Respondents' bank has utilized the service of the Petitioner for more than a decade, he should not be terminated without following the legal procedure as laid down under Sec.25F of the Industrial Disputes Act, 1947. Therefore, the action of the Respondents' management is not legal and justified.

Thus, Point Nos. I & II are answered accordingly.

12. **Point No.III:** In view of the findings given in Point Nos. I & II, the Petitioner is entitled for absorption into service and also entitled to get retrenchment benefits.

Thus, Point No.III is answered accordingly.

ORDER

In view of the above discussion, the oral termination with effect from 1.3.2006 of Sri M. Raju, Car Driver by the management of Central Bank of India is not legal and justified and the said order is hereby set aside. The Respondents' management is directed to consider the Petitioner workman for his reinstatement in their establishment as a full time driver under the relevant scheme and Rules. If the Petitioner is not eligible under the rules and schemes for conversion into full time driver, the Respondents' are at liberty to retrench the Petitioner only by following due procedure as required under the Industrial Disputes Act, 1947.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 29th day of June, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri M. Raju

Witnesses examined for the
Respondent

MW1: Sri B. Venkata Ramana

Documents marked for the Petitioner

Ex.W1 : Identity card issued by the Respondent bank
Ex.W2 to : Photostat copies of cheques issued by the Respondent bank
Ex.W11 : towards monthly salary
Ex.W12 : Salary certificate issued by the Respondent bank dt. 7.2.2006
Ex.W13 : Service certificate dt. 13.11.2004
Ex.W14 : Photostat copy of log book containing 3 pages.

Documents marked for the Respondent

Ex.M1 : Photostat copy of order of Min. of Finance F.No. 9/5/92-IR dt. 23.6.1997
Ex.M2 : Photostat copy of order in WP No. 923/1998

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. वेस्टर्न इंडिया शिपयार्ड लि., मै. मोरमुगाव मरीन लोजेस्टीक्स प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, मुम्बई के पंचाट (संदर्भ संख्या 39/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-36012/1/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2011) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Western

India Shipyard Ltd., M/s. Mormugao Marine Logistics Pvt. Ltd. and their workmen, received by the Central Government on 06.08.2018.

[No. L-36012/1/2011-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/39 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

- (1) M/S. WESTERN INDIA SHIPYARD LTD.
- (2) M/S. MORMUGAO MARINE LOGISTICS PVT. LTD.

- (1) The Managing Director,
M/s. Western India Shipyard Ltd.,
Marmugaon Harbour,
Goa – 403 802
- (2) The Managing Director,
M/s. Mormugao Marine Logistics Ltd.,
Pvt. Ltd., Marmugaon Harbour,
Goa – 403 803.

AND

THEIR WORKMEN

Mrs. Hamida B. Shaikh,
W/o. Late Mr. Anil Kumar B.,
H. No. 25, New Vaddem,
Vasco-Da-Gama, Goa – 403 802.

APPEARANCES:

FOR THE EMPLOYER : Mr. K. S. Kerkar, Advocate
FOR THE WORKMEN : Mr. P. J. Augustine, Advocate

CAMP – GOA - dated the 6th June, 2018

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-36012/1/2011 – IR (B-II) dated 19.07.2011. The terms of reference given in the schedule are as follows :
“Whether the action of the management of M/s. Western India Shipyard Ltd. / M/s. Mormugao Marine Logistics Ltd. in terminating the employment of Mrs. Hamida B. Shaikh w.e.f. 06.09.2010, is legal and justified ? What relief the worksmn is entitled to ?”
2. After the receipt of the reference, both the parties were served with the notices.
3. Having gone through Roznama, it appears that Reference is fixed for evidence of concerned workman. However it appears that concerned workman is absent since 13/9/17. She has not filed her affidavit in evidence. Today also the concerned workman is absent as such the concerned workman has failed to substantiate the Statement of Claim and therefore the Reference is liable to be rejected and accordingly the Reference is rejected.

ORDER

Reference is rejected.

Date: 06.06.2018
[CAMP – GOA]

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांदला पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ संख्या 177/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-37011/2/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 177/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 06.08.2018.

[No. L-37011/2/2006-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th July, 2018

Reference: (CGITA) No. 177/2006

The Chairman,
Kandla Port Trust,
Administrative Office, Post Box No. 50, Gandhidham,
Kutch (Gujarat)

...First Party

V/s

The General Secretary,
Transport and Dock Workers Union,
21, Yogesh Building, Plot No. 586, 12-C,
Kutch (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri N.H. Rathod

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-37011/2/2006-IR(B-II) dated 15.09.2006 referred the dispute for adjudication to the Central Govt. Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Kandla Port Trust, Gandhidham in not regularising the services of Shri Gaffor Siddiq Soda, Marine Khalasi, who claimed to have completed 240 days of service in a year is legal and justified? If not, what relief the workman concerned is entitled to?”

1. The reference dates back to 15.09.2006 and received on 25.09.2006 from Ministry of Labour and Employment, New Delhi for adjudication. Both the parties submitted their statement of claim and written statement Ex. 10 and 17 respectively.

2. But today on 17.07.2018, Shri Nirdosh H. Rathod, advocate for the second party union The General Secretary, Transport and Dock Workers Union, 21, Yogesh Building, Plot No. 586, 12-C, Kutch (Gujarat) submitted a letter Ex. 20 stating that the workman does not want to prosecute the reference.

3. Thus the reference is finally disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ संख्या 107/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-12012/161/2000-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 107/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 06.08.2018.

[No. L-12012/161/2000-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 12th July, 2018

Reference: (CGITA) No. 107/2010

The Manager,
Indian Bank,
Personnel Department,
“Toral” Building, Subhash Road,
Rajkot(Gujarat) –360001

...First Party

V/s

Shri Ravjibhai Khodabhai Davera,
C/o Saurashtra Kutch Mazdoor Sangh,
317, Panchnath Commercial Centre,
Harihar Chowk, 3rd Floor,
Dr. Rajendra Prasad Road,
Rajkot (Gujarat) – 360001

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri Chetan Vyas

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/161/2000-IR(B-II) dated 07.04.2008 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the claim of Shri Ravjibhai Khodabhai Davera that he has been working continuously as Messenger w.e.f. April, 1992 and that his services were terminated w.e.f. 11.08.1999 by the management of Indian Bank without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If so, then what relief the concerned workman is entitled to?”

1. The reference dates back to 07.04.2008 and was received on 22.04.2008 from Ministry of Labour and Employment, New Delhi for adjudication. The second party submitted the statement of claim Ex. 3 alleging that he has been working with the first party Indian Bank, Rajkot since 1992 as Messenger which was of a permanent nature. It is wrong to say that he was not a temporary or casual worker. He used to do clerical work as and when the regular staffs remains on leave. He has been working for more than 300 days in each year but his services were terminated on 11.08.1999 without serving notice and paying legal dues and he was also not afforded any opportunity to defend himself. No departmental enquiry was ordered. Since then he has been unemployed and the first party bank has employed another person in his place. He sent a registered notice to the bank for reinstatement but to no result. Thus he has prayed for reinstatement with back wages.

2. The first party submitted the written statement Ex. 5 denying the averments made in the statement of claim submitted that the tribunal has no jurisdiction to adjudicate the matter as the workman was a casual worker. The reference is not maintainable and bad in law because it is a settled law that a person, who is not appointed as per the recruitment rules of the organisation, will not have a right to reinstatement with or without back wages. It is further submitted that the second party workman Ravjibhai Khodabhai Devera availed a loan of Rs.95000/- (Rupees Ninety Five Thousand) under the Prime Minister Rojgar Yojana on 11.06.1996 for running a business of Glass Ware and stop coming to the bank at his own accord since 11.08.1999 after availing the aforesaid loan. He has concealed the aforesaid facts and has not come with the clean hands. The first party has not violated the provisions of Industrial Disputes Act and the reference is liable to be dismissed with on cost.

3. On the basis of the pleadings, the following issues arise for adjudication:

I. Whether the claim of Shri Ravjibhai Khodabhai Devera that he has been working continuously as Messenger w.e.f. April, 1992 and that his services were terminated w.e.f. 11.08.1999 by the management of Indian Bank without following the provisions of Industrial Disputes Act, 1947 is legal and justified?

II. To what relief, if any, the workman is entitled?

4. **Issue No. I & II:** The burden to prove these issues was on the second party workman. The second party workman submitted his affidavit Ex. 7 reiterating the averments made in the statement of claim. In his cross-examination, he has admitted that his date of birth is 18.05.1962. He studied up to 12th standard. There was no advertisement published in newspaper for the post to which he is seeking claim for appointment. The bank did not give any appointment letter to him. His name was also not forwarded or recommended by Employment Exchange. He was paid wages on day to day basis. He had been working as Messenger. He was working on leaving vacancy as and when required. He has produced the documents regarding working for 240 days in the file. He applied for getting loan to start the business under the Prime Minister Employment Scheme, 1999. Rs.95000/- loan was sanctioned in the year 1999 for Crockery business. It is not true that when he started business, he stopped going to bank for employment. He knows that while in employment, he cannot run business. He re-paid the loan by borrowing. He has 4 family members. He used to spend Rs.10000/- on family.

5. The first party bank did not examine any witness but submitted the documents vide list Ex. 8. The documents reveals that the workman was sanctioned a loan of Rs.95000/- on 15.06.1999 for running the shop of Crockery and Glass Wares.

6. These documentary evidences have not been controverted by the second party workman. Thus the averments made in the statement of claim and affidavit appears to be non-believable and the workman has failed to establish his case.

7. Thus the reference has no force and liable to be decided in negative.

8. Thus the reference is disposed of with the observation as under: “the claim of Shri Ravjibhai Khodabhai Devera that he has been working continuously as Messenger w.e.f. April, 1992 and that his services were terminated w.e.f. 11.08.1999 by the management of Indian Bank without following the provisions of Industrial Disputes Act, 1947 can be said to be illegal and unjustified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ संख्या 571/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08. 2018 को प्राप्त हुआ था।

[सं. एल-12012/107/2003-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 571/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 06.08.2018.

[No. L-12012/107/2003-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th July, 2018

Reference: (CGITA) No. 571/2004

The Regional Manager,
Bank of Baroda,
Opp. Reserve Bank of India,
Near ADC Bank, Ashram Road,
Ahmedabad (Gujarat) – 380014

...First Party

V/s

Shri Harshad Manubhai Brahmbhatt,
1119, Vasudev's Vadi, Lohar Sheri, Saraspur,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri V.K. Mashar

For the Second Party : Shri V.J. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/107/2003-IR(B-II) dated 14.08.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of Baroda in not considering candidature/application of Shri Harshad Manubhai Brahmbhatt in response of advertisement dated 14.08.1991 was justified and legal? If not, to what relief the workman is entitled?”

1. The reference dates back to 14.08.2003 and received on 29.09.2003 from Ministry of Labour and Employment, New Delhi for adjudication. The second party workman Harshad Manubhai Brahmbhatt, hereinafter referred to as “workman” submitted the statement of claim Ex. 8 alleging that he has been appointed and working as Peon on daily rated basis from 1982 to 1990 in different branches of Bank of Baroda, Ahmedabad and worked till 1993. He worked for 338 days during the aforesaid period. An advertisement was issued in daily Newspaper “Sandesh”, a Gujarati daily Newspaper on 14.08.1991 stating that a workman who worked 90 days in Bank of Baroda during 1982 to 1990, may apply for regular appointment. In pursuance of the advertisement, he applied for such appointment submitting the School Leaving Certificate regarding age and qualification and also his work experience in different branches where he served.

2. The second party workman further alleged that he was not informed regarding the result of such process; therefore, he approached the Employees' union regarding the said process. He was told that his application was rejected being incomplete. He has further alleged that he worked for 338 days in different 7 branches of Bank of Baroda during the aforesaid period and the said letters were also submitted to the authority but he was not short listed while other candidates who were short-listed were junior to him/later appointed in service as casual worker. He has further alleged that out of 9 branches where he served, 2 branches of the bank deliberately did not issue him the work certificate. Thus he has alleged that his exclusion from the list of short-listed candidates was arbitrary, discriminatory, biased and against

the principle of natural justice. Thus he has prayed for declaring his exclusion from the short-listed candidates as illegal and also prayed for appointment as permanent employee with all benefits.

3. The first party The Regional Manager, Bank of Baroda, Opp. Reserve Bank of India, Near ADC Bank, Ashram Road, Ahmedabad, hereinafter referred to as “Bank” submitted the written statement Ex. 9 partly admitting the averments made in the statement of claim regarding his working as daily wager but the details averments are not admitted. The Bank has further submitted that the second party workman has never been employee of the Bank and was not appointed or employed by the Bank as per rules and regulations of the Bank. He has never completed 240 days in any calendar year. There was no master servant relationship between the Bank and the workman. No Branch Manager as per the Rules and Regulations of the Bank is authorised or competent to appoint any employee. Employment in the Bank is a public employment under State as per the provisions of Article 14 and 16 of the Constitution of India. There is no violation of Section 25 B of the Industrial Disputes Act as the second party workman has not worked for 240 days in any calendar year. But it is admitted that the Bank has published an advertisement in Gujarat Daily Newspaper “Sandesh” on 14.08.1991 inviting applications for preparing panel of candidates who have worked for more than 90 days at any branch or office of the Bank situated in India between 01.01.1982 to 31.12.1990 for considering the filing of vacancies provided they fulfil following conditions:

- “i. The candidate should have passed 7th standard, however, should not have studied beyond 8th standard. He should have completed 18 years of age, however at the time of first engagement he should not have completed 26 years.
- ii. His appointment and service are subject to reservation for SC, ST, Phy. Handicapped, Ex-servicemen etc. and subject to permission of Director General, Employment and Training.

4. It is further submitted that the application should accompany the proof of date of birth, certificate of educational qualification, work experience which would have been lacking in the case of this workman, therefore, the application might have not been considered. It is further submitted that the workman also might have not been completed the required tenure of engagement, hence his application might have not been considered.

5. It is noteworthy that the first party Bank is not certain in his averments made in the written statement that whether the workman was fulfilling the criteria or not.

6. On the basis of the pleadings, the following issues arise for adjudication:

- I. Whether the action of the management of Bank of Baroda in not considering candidature/application of Shri Harshad Manubhai Brahmhatt in response of advertisement dated 14.08.1991 was justified and legal?
- II. To what relief, if any, the workman is entitled?

7. **Issue No. I & II:** Both the issues are interrelated, therefore, decided together. The burden to prove these issues was lying on the second party workman. The second party workman submitted his affidavit Ex. 21 and documents vide list Ex. 20. The first party Bank has also filed the documents vide list Ex.12 more or less the same which the workman has filed.

8. The second party workman in his affidavit Ex. 21 has reiterated the averments made in the statement of claim Ex. 8 and in his cross-examination, he has stated that he was not a regular employee of the Bank. He was appointed on daily wage basis. He has not been given certificate of the actual working days of his work done in the Bank. The Bank denied to have given such certificates. He worked lastly in the year 1993. The advertisement came in the year 1991. He was not given any letter by the Bank. The Bank has denied considering his name for regularisation. He is 8th standard pass. The advertisement was made for preparation of list of employees for absorption who worked for 90 days in a calendar year. He applied within the prescribed time for absorption.

9. The first party Bank submitted the affidavit of Shri Rajesh Gohel, Chief Manager, Bank of Baroda stating that the workman has never been employee of the Bank. He never completed 240 days in the calendar year. No Branch Manager can employ any person as per the rules of the Bank. The Bank published an advertisement in Gujarat Daily Newspaper “Sandesh” on 14.08.1991 inviting applications for preparing panel of candidates who have worked for more than 90 days at any branch or office of the Bank situated in India between 01.01.1982 to 31.12.1990 for considering the filing of vacancies provided they fulfil following conditions:

- “i. The candidate should have passed 7th standard, however, should not have studied beyond 8th standard. He should have completed 18 years of age, however at the time of first engagement he should not have completed 26 years.
- ii. His appointment and service are subject to reservation for SC, ST, Phy. Handicapped, Ex-servicemen etc. and subject to permission of Director General, Employment and Training.”. He has further stated that the

workman might have applied but in the absence of proof of engagement, his application might have not been considered. He has not said anything contrary in his cross-examination.

10. I considered the arguments of advocates and evidences of both the parties. The cross-examination and examination-in-chief of the first party witness Shri Rajesh Gohel and also averments made in the written statement reveals that the first party Bank is not certain as to why and on what basis the application of the workman for consideration in the preparation of panel was rejected because the witness as well as the written statement reveals that both the averments and the statement on oath based on assumptions that the application might have been incomplete, therefore, might have not been considered. Assumptions have no value in the eye of law. Once the workman has stated on oath that he submitted his application for consideration in the preparation of panel of short-listed candidates with a proof of age and qualification by way of School Leaving Certificate and work experience and has also filed the documentary evidence in regard the same then it is the duty of the first party Bank of Baroda to rebut the same which has not been done by the first party Bank.

11. Thus in the light of the aforesaid discussions, I come to the conclusion that the second party workman has applied his name for consideration to be in the panel of the short-listed candidates with a proof vide documents Ex. 20/4 making it clear that he worked for 338 days in the period of consideration zone. Thus the workman was entitled to be included in the panel of short-listed candidates. It is also not properly denied that junior candidates have not been appointed; therefore, it would be equitable and just that the workman should be ordered to be appointed as a regular employee with Rs.100000/- (Rupees One Lac) in lieu of back wages.

12. Thus both the issues are decided accordingly in the absence of proper evidence on the part of the first party Bank with an observation that the action of the management of Bank of Baroda in not considering candidature/application of Shri Harshad Manubhai Brahmhatt in response of advertisement dated 14.08.1991 was unjustified and illegal.

13. The first party Bank of Baroda is directed to appoint Harshad Manubhai Brahmhatt as Peon and also to pay Rs.100000/- (Rupees One Lac) as lump-sum compensation in lieu of back wages within 60 days from the publication of the award.

14. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2018

का.आ. 1222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंशोरेंस कम्पनी लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 24/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2018 को प्राप्त हुआ था।

[सं. एल-17011/20/2002-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th August, 2018

S.O. 1222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of National Insurance Co. Ltd. and their workmen, received by the Central Government on 06.08.2018.

[No. L-17011/20/2002-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 24 of 2002

Parties:

Employers in relation to the management of National Insurance Co. Ltd.

A N D

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Ranjay De, Ld. Counsel.

On behalf of the Workmen : Mr. Madhusudan Dutta, Ld. Counsel.

State: West Bengal

Industry: Insurance

Dated: 16th July, 2018

AWARD

By Order No.L-17011/20/2002-IR(B-II) dated 23.10.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether any employer-employee relationship exists between the management of National Insurance Co. Ltd. (NICL) Kolkata and the three disputants viz. S/Shri Pankaj Kar, Sunil Kumar Pramanik and Gopinath Ghosh? If so, whether their claim for absorption in the service of NICL is legal and justified and what relief are they entitled to?”

2. Above reference has been made by the Central Government at the instance of Eastern Zone General Insurance Employees Union which claims to be only representative trade union functioning in general insurance industry. In statement of claims filed by the union it is stated that the concerned workman, Shri Pankaj Kar engaged in Regional Office – 1 of National Insurance Co. Ltd. performed the job of electrical maintenance in the Company. He also performed the duties of water pump operator as well as generator operator in different phases of a day. Another workman, Shri Sunil Pramanik who was engaged in the Head Office Wing of Kolkata with effect from 1978 was assigned the job of a permanent Class-III as well as Class-IV employee of handling cash withdrawal, disbursement of salary of the employees under the instruction and supervision of competent authority. Third workman, Shri Gopinath Ghosh was engaged in Divisional Office – XI with effect from 14th February, 1981. He was assigned job of depositing and withdrawing money in the Bank, regular job of electrical maintenance and carrying official letters to Regional Office and Head Office for hand delivery etc. It is stated that all the jobs done by above three workmen were of perennial nature, but the Company with *malafide* motive to exploit their human labour sometimes called them “contractor labour”, sometimes “casual labour” and sometimes “badli” only to compel them to work in starving wages. The job for which above three workmen are engaged, are mostly done by permanent workmen in similar industry and they do get salary accordingly. The company to camouflage the real state of affairs tries to show a sham contract in conciliation proceedings only to deprive the concerned workmen from their legitimate claim for absorption in service. The contractors who were sought to be shown as supplier of labours had no license as required under the Act proving thereby that there had been no real contractor within the meaning of the said Act. The story of so called contractor was cooked up to avoid regularization of service of the workmen. When the management did not pay any heed to their grievance, the union raised an industrial dispute before the Regional Labour Commissioner (Central), Kolkata. But, due to adamant attitude of the company, the conciliation proceedings failed resulting in reference of industrial dispute by the Central Government.

3. The management of National Insurance Co. Ltd. filed its written statement denying all the allegations of the union and pleaded *inter alia* that the reference is not maintainable as no dispute has been properly raised so as to transform the alleged dispute to be industrial dispute. The reference is also not maintainable since there was no subsistence of employer – employee relationship between the company and the persons concerned. The trade union at the instance of which reference has been made is not representative of the workmen thus it has no *locus standi*. It is baseless to state that workmen, S/Shri Pankaj Kar, Sunil Kumar Paramanik and Gopinath Ghosh were engaged by the company. There cannot be engagement, unless vacancies are determined which are absent in the instant case. There cannot be any recruitment without the candidate being recommended by the Employment Exchange. Any casual work as a daily wage for few days cannot ripen into regular work and such work is *dehors* of norms of engagement and as such cannot have any validity in the eye of law. The allegation of sham contract is baseless. There is no camouflage of real state of affairs and there is no scope for absorption and contention of the union on this score is totally baseless. The company always complied with the statutory provisions including compliance with the provisions of Contract Labour (Regulation & Abolition) Act, 1970. The claim of workmen is not valid or legal or justified and they are not entitled to any relief whatsoever.

4. A rejoinder was filed on behalf of the union reiterating the pleas made in the statement of claims.

5. On behalf of union WW-01, Shri Samarandra Nath Sanyal, WW-02, Shri Kushal Nag, WW-03, Shri Pankaj Kar and WW-04, Shri Gopinath Ghosh have been examined and on behalf of the management MW-01, Shri S.S. De has been examined. Apart from this, documentary evidence have also been filed on behalf of the union which shall be discussed as and when required.

6. I have heard learned counsel for the union as well as for the management. From the submission made by the learned counsel for both the parties following points emerge for determination in order to answer the reference – (i) whether the union which espoused the cause of three workmen has got any locus standi and (ii) whether there is any relationship of employer and employee between the management of the company and the concerned workmen.

7. It is not disputed that formation of opinion by the appropriate government can be questioned by Industrial Tribunal on ground that condition precedent for making reference is absent. In order to determine whether an individual dispute has been transformed into an industrial dispute under the provisions of Industrial Disputes Act, 1947, we must first peruse the definition of industrial dispute as given in Section 2(k) of the Industrial Disputes Act, 1947 which is quoted below:

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

8. In the instant case, it is not disputed that the union has espoused the cause of the concerned workmen but before it can be said to be an industrial dispute, the representative character of the trade union has to be seen. The learned counsel for the management has submitted that the three workmen had never been member of the union, therefore, the union has no *locus standi* to espouse their cause. For his argument learned counsel for the management has referred cross-examination of WW-01, Samarendra Nath Sanyal in which he has admitted that he had not filed any document to show that the persons named in the schedule of reference are members of the union. They also did not take part in the check off system. He has further deposed that the persons named in the schedule of reference never worked under him, nor did they work in Division – XII. He has stated to have knowledge of their working. WW-02, Kushal Nag has stated that in written statement it is not mentioned that these persons are members of the union. No resolution of the union has been filed to show that union took a decision to espouse the cause of the workmen, even no document has been filed to show that the concerned persons ever applied to the union for membership. The statement of WW-03, workman Shri Pankan Kar is worth mentioning –

“I know there are several workmen unions in our office. I was never called upon to cast any vote in respect of any of such union.

I am not a member of any union in the office of the company. I do not know which workmen union is conducting the present reference on behalf of the workmen union.”

9. Thus from the evidence of the union itself it is established that the workmen concerned were not member of the union. They never participated in activities of the union.

10. In U.P. State Warehousing Corporation & Anr. v. Presiding Officer, Industrial Tribunal & Anr., CDJ 2013 All HC at page 64 it has been held that

“It is settled law that a person who files a claim is required to prove his case. The industrial dispute was raised at the instance of the union, and even though, the provisions of Evidence Act is not applicable in industrial proceedings, nonetheless, the burden of proof is upon the union and its workers to prove their claim before the Labour court.”

Thus burden lies upon the union to prove that the union has representative character and for that it has to show that the concerned workmen are members of the union.

11. Learned counsel for the union has argued that the definition of industrial dispute as given in Industrial Disputes Act, 1947 nowhere says that the cause of the concerned workmen can only be espoused by a union only and also that for espousal of cause it is not necessary that the union should be registered. For his submission learned counsel has relied on Secretary (Policy), Regional Director (Food) Employees Association v. Food Corporation of India & Ors., 2001-I-LLJ 203 in which it has been categorically held by the Hon’ble Calcutta High Court that for the purpose of raising an industrial dispute on behalf of the workman it is not necessary that a trade union must be recognized one. Even some of the other workmen are entitled to raise an industrial dispute on behalf of the concerned workmen. The learned counsel has further relied on Jadhav J.H. v. Forbes Gokak Ltd., 2005-I-LLJ (SC) 1089 for his submission that the words any person used in definition in Section 2(k) of the Industrial Disputes Act sufficiently shows that for espousal of cause of a concerned workman it is not necessary that union should come forward. Even a group of workmen can espouse cause of the aggrieved workman. In the above case of Jadhav J.H. (supra) Hon’ble the Apex Court has approved its previous decision in Workmen of Dharmpal Premchand (Saughandhi) v. Dharmpal Premchand (Saughandhi), AIR 1966 SC 182 wherein it was held that

“.....for the purpose of section 2(k) it must be shown that (1) the dispute is connected with the employment or non-employment of a workman. (2) the dispute between a single workman and his employer is sponsored or espoused by a union of workmen or by a number of workmen. The phrase “the union” merely indicates the

Union to which the employee belongs even though it may be a Union of a minority of workmen. (3) the establishment had no Union on its own and some of the employees had joined the Union of another establishment belonging to the same industry. In such a case it would be open to that Union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such Union was not exclusively of the workmen working in the establishment concerned."

12. Further, reliance has been placed by the learned counsel for the union on Standard Vacuum Refining Company of India Ltd. v. their workmen & Anr., 1960-II-LLJ 233 where elaborating the principle of espousal, Hon'ble the Apex Court has held with approval of its previous judgment given in workmen of Demakuchi Tea Estate v. management of Dimakuchi Tea Estate, 1958-I-LLJ 500 that there must be a community of interest with the workmen who are affected and the workmen who have espoused the cause. They must have also a substantial interest in the subject matter of dispute in the sense that the class to which they belong is substantially affected thereby. The test, therefore, to be applied in determining the scope of the words "any person" in Section 2(k) was stated in Dimakuchi case (supra) in the following words:

"If, therefore, the dispute is a collective dispute, the party raising the dispute must have either a direct interest in the subject matter of dispute or a substantial interest therein in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It is the community of interest of class as a whole - class of employers or class of workmen - which furnish the real nexus between the dispute and the parties to the dispute. We see no insuperable difficulty in the practical application of this test. In a case where a party to a dispute is composed of aggrieved workmen themselves and the subject-matter of the dispute relates to them or any of them, they clearly have a direct interest in the dispute. Where, however, the party to the dispute also composed of workmen espouse the cause of another person whose employment or non-employment, etc., may prejudicially affect their interest, the workmen have a substantial interest in the subject-matter of dispute. In both such cases the dispute is an industrial dispute."

13. In another case, Western India Match Co. Ltd. vs. Western India Match Co. Workers Union & Others, AIR 1970 SC 1205 discussing the necessity of membership of espousing union, Hon'ble the Apex Court has observed that:

"If it is insisted that the concerned workman must be a member of the union at the time of his dismissal, the result would be that if at the period of time there is no union in particular industry and it comes into existence later on then the dismissal of such a workman can never be an industrial dispute although the other workmen have a community of interest in the matter of their dismissal and the cause for which or the manner in which his dismissal is brought about directly and substantially affects the other workmen"

It has been further clarified that –

"The only condition for an individual dispute turning into an industrial dispute as laid down in the case of Dimakuchi Tea Estate (supra) is the necessity of community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal."

14. Thus from the above discussion, it is established that the workmen having a substantial interest in the subject matter of the dispute and having a community of interest can espouse the cause of any person. The community of interest does not depend on whether the concerned workman was a member or not at the time when cause occurred. Now the question is whether the workman concerned have any community of interest with the employees of National Insurance Company Ltd or in other words whether the employees of National Insurance Company Ltd. have substantial interest in the subject matter of the dispute so as to espouse the cause of the affected workmen. In the instant case the concerned workmen have claimed their absorption in service of National Insurance Company. From the evidence available on record it is not established that apart from these three workmen, similar issues have also been raised by other persons also. For community of interest, it is necessary that in case the issue is decided in negative, the interest of other persons are adversely affected, but there is no evidence to show it. There is no evidence on record to show that the members of the union who are employees of the Company have any community of interest with the affected persons.

15. In view of above discussion, it is evident that in absence of any resolution of union espousing the cause of the concerned workmen and also absence of community of interest of workmen with concerned workmen, the union has no *locus standi* to espouse the cause of the concerned workmen and therefore, reference is incompetent.

16. Though learned counsel for the union has also relied on Hotel Imperial, New Delhi v. Chief Commissioner, Delhi, 1959-II-LLJ 553, but I do not find any applicability of this case in the present one. In above referred case the dispute was regarding mention of name of the union in reference order which was found to be not illegal and which does not invalidated the reference order.

17. Though this reference can be disposed only on the ground that it is incompetent reference because of union having no *locus standi*, but I think it just and proper to deal with the point referred by the Central Government regarding

subsistence of relationship of employer and employee between the management of National Insurance Company Ltd., Kolkata and the concerned workmen.

18. While dealing with the relationship of employer and employee, question immediately emerges as to what are the tests to decide the relationship. Hon'ble the Apex Court in Balwant Rai Saluja & Anr. V. Air India & Ors., 2014 (9) SCALE 567 = CDJ 2014 SC 694 while determining the relationship of employer and employee has held as follows:

"61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer – employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra)."

19. The aspect of relationship of employer – employee is a pure question fact and initial burden is on the person who claims the existence of employer – employee relationship. The aspect of burden of proof has been elaborately dealt with by Hon'ble the Apex Court in Nilgiri Cooperative Marketing Society Limited v. State of Tamilnadu and Ors., JT 2004 (2) SC 51 wherein it has been held that

"47. It is well settled principle of law that the person who sets up a plea of existence of employer employee relationship, the burden would be upon him.

48. In N.C. Jhon vs. Secretary, Thodupuzha Taluk Shop and Commercial Establishment Workers' Union & Ors. (1973 Lab. I.C. 398) the Kerala High Court held –

"The burden of proof being on the workmen to establish the employer employee relationship an adverse inference cannot be drawn against the employer that if he were to be produce books of account they would have proved employer employee relation."

49. In Swapan Dasgupta and Ors. vs. The First Labour Court of West Bengal and Ors. (1976 Lab. I.C. 202) it has been held –

"where a person asserts that he was a workman of the Company and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other persons."

50. The question is whether the relationship between the parties is one of the employer and employee is a pure question of fact....."

20. Further in a case of Bank of Baroda v. Ghemar Bhai Harjibhai Rabary, 2005 (3) Scale 353 Hon'ble the Supreme Court has observed –

"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The decree of such proof so required vary from case to case."

21. Hon'ble the Allahabad High Court in U.P. State Warehousing Corporation case (supra) has lucidly pointed out that where the stand of the union is that the members are employed by the employer and that they being paid wages through them, it is for the union to prove by oral as well as documentary evidence and only then the burden is discharged. Thus from the above case laws it is amply clear that the initial burden to prove the relationship of employer and employee lies on the union/workman and once this initial burden is discharged, onus shifts upon the employer. In the present case, in order to prove relationship of employer and employee, the union has examined four witnesses who have deposed before this Tribunal. WW-01, Shri Samarandra Nath Sanyal has stated "I have not filed any document to show that the persons named in the schedule of reference are members of our union. They did not take part in the check-off system". Further, WW-02, Shri Kusal Nag in his cross-examination has deposed as follows:

"There is nothing on record to show that salaries have been received at a time for a month by the concerned persons."

He has further stated that "We have not filed any document to show that they have ever applied to the management for any kind of post." Though WW-02 has stated that he was recruited in the Company through a recruitment process, this fact is not mentioned in the written statement of the union as to how the concerned persons were recruited.

22. WW-03, Shri Pankaj Kar has stated as follows:

“I registered my name in the Employment Exchange, but it lapsed. I cannot tell the number of my card or the date when I was registered. The sub-staff belongs to Class-IV category. I cannot say how the sub-staff were recruited in the Company. I have not submitted any document to show that the Company appointed me. I have not submitted any document to show that the Company ever paid me salary. I have not filed any paper here in support of my claim that I am working in the Company continuously till today.”

23. The statement of concerned workman, Shri Gopinath Ghosh examined as WW-04 having bearing on the point in issue may be quoted below:

“My name was registered in the Employment Exchange but since I did not renew my registration, perhaps my name is stuck out. I have not filed any paper in respect of my registration with the Employment Exchange.”

.....I have applied in writing for the post of peon in the National Insurance Company. I know how the salaries of employees of the Company is being disbursed at the end of month and it is done by way of preparation of pay sheet and also by way of issue of cheque in the name of the employees having salary above ten thousand and by cash for the salary below ten thousand. I have never drawn any salary by following the said procedure.”

I have never received any appointment letter from the Company to join in their job in 1981 or any time thereafter.

I have never received any letter from the Company fixing my duty hours on the office to work between 10 A.M. to 6 P.M. I have no paper to prove that I am working in the National Insurance Co. from 1981 till date.
.....

I was never issued with any pay sheet or pay slip by the Company towards payment of wages. Not a fact that I never drew any salary or wage from the Company in the system of payment at the end of the month.

It is a fact that the National Insurance Co. never pays the salary through vouchers to its employees. Not a fact that I have got no relation of employer and employee with the National Insurance Company.”

24. Contrary to the statement of witnesses examined on behalf of the union, the management witness, Shri S.S. De has filed his affidavit stating that the concerned workmen were never recruited and they were never engaged by the Company. He has also stated that there are recruitment rules in the Company. As per recruitment rules vacancies are determined before recruitment. Shri Pankaj Kar was a contract workman working under M/s. Laxmi Narayan Electrical Works. The said Company used to undertake Generator/Electrical maintenance jobs at the material point of time. Other workman, Shri Gopinath Ghosh was also not engaged by the National Insurance Company directly. He was engaged through contractor M/s. New Calcutta Diesel and as such there is direct employer – employee relationship with the management. Shri Sunil Pramanik though was engaged by the Company directly but payments were made job-wise. His job was not of perennial nature. Thus, testimony of management witness finds support from the statement of WW-01, Shri Samarendra Nath Sanyal when he says that he has not produced any document to show that the persons named in the order of reference were ever appointed as employee of the Company. There is no mention in the written statement of the union that the persons named in the order of reference were paid salary through vouchers. WW02, Shri Kusal Nag has also deposed that he was recruited by the Company through a recruitment process. There is no mention in the written statement of the union as to how the concerned workmen were recruited. He has also stated that he is an employee of the Company and receives salary month by month, but no document has been filed on record to show that the persons concerned were ever paid salary by the Company and the management of the Company ever directed them to do all works. WW-03, Shri Pankaj Kar has also admitted that he does not have any document to show that the Company ever appointed him and paid salary. There is nothing to show that the Company ever instructed him to do any work. Similar is the statement of WW-04, Shri Gopinath Ghosh. It is pertinent to note here that the union has not examined the third workman, Shri Sunil Kumar Pramanik to substantiate his own case. Thus statements of witnesses of union do not support its case, rather demolished the case.

25. Learned counsel for the union has submitted that even if it is assumed that the workman, Shri Pankaj Kar and Shri Gopinath Ghosh were engaged through contractor, same also establishes relationship of employer and employee between the Company and the workmen, as the alleged contractor had no license to supply contract labour, nor the Company was registered as principal employer as required under the Contract Labour (Regulation and Abolition) Act, 1970. Thus, he has argued that that the contract was mere sham contract and the management in order to camouflage the real picture has tried to show a sham contract only to deprive the concerned workmen from their legitimate claim of absorption in service.

26. Contrary to it, learned counsel for the Company has submitted that though the contractor and the Company had no valid license to supply contract labour and as principal employer respectively under the above Act of 1970, that does not cloth the contract labours with legal right to claim that they are direct employees of the Company. The relevant portion of

the judgment of the Hon'ble Calcutta High Court in M/s. Iron & Steel Company Limited v. State of West Bengal, CDJ 201 Cal 446 having direct bearing on the issue is quoted below:

“20. Non-obtention of licence without anything more, would not clothe the added respondents with any legal right to claim that they are direct employees of the company and hence entitled to continue in service despite the contract with Kaycee not being renewed.”

27. Learned counsel for the union has relied on decision of Hon'ble the Supreme Court in Secretary, Hariyana Electricity Board v. Suresh & Others, 1999-I-LLJ 1086 facts of which are similar to that of the present case and has argued where there is no registration of contractor and principal employer, the principal employer is under statutory obligation to absorb the contract labour. Once the board was not principal employer and the so-called contractor was not licensed contractor, the inevitable conclusion that had to be reached was to the effect that the so-called contract system is a mere camouflage, smoke and a screen and disguised in almost a transparent wheel which could easily be pierced and the real contractual relationship between the board on one hand and the employee on the other hand could easily be visualized. However, learned counsel for the management has submitted that the above decision was based on Hon'ble Apex Court's judgment passed in Air India Statutory Corporation etc. v. United Labour Union & Ors., 1997-I-LLJ 1113 which has been overruled by Five Judges Bench of Hon'ble the Apex Court in Steel Authority of India Ltd. v. National Union of Waterfront Workers & Ors., CDJ 2001 SC 517. Relevant portion of which may be quoted as below:

“96. While this was the state of law in regard to the contract labour, the issue of automatic absorption of the contract labour came up before a Bench of three learned Judges of this Court in Air India's case (supra). The Court held: (1) though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer; (2) the Act did not intend to denude the contract labour of their source of livelihood and means of development throwing them out from employment; and (3) in a proper case the Court as sentinel on the qui vive is required to direct the appropriate authority to submit a report and if the finding is that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of the contract labour under Section 10(1), the High Court has a constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer. Justice Majumder, in his concurring judgment, put it on the ground that when on the fulfillment of the requisite conditions, the contract labour is abolished under Section 10(1), the intermediary contractor vanishes and along with him vanishes the term “principal employer” and once the intermediary contractor goes the term “principal” also goes with it; out of the tripartite contractual scenario only two parties remain, the beneficiaries of the abolition of the erstwhile contract labour system, i.e. the workmen on the one hand the employer on the other, who is no longer their principal employer but necessarily becomes a direct employer for erstwhile contract labourers. The learned Judge also held that in the provision of Section 10 there is implicit legislative intent that on abolition of contract system, the erstwhile contract workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities under Chapter V in that very establishment. In regard to the judgment in Gujarat Electricity Board's case (supra), to which he was a party, the learned Judge observed that he wholly agreed with Justice Ramaswamy's view that the scheme envisaged by Gujarat Electricity Board's case was not workable and to that extent the said judgment could not be given effect to.

97. For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning and conclusions.

116.

The upshot of the above discussion is outlined thus:

(1).....

(2).....

(3).....

(4) We over-rule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment of in Air India's case (supra), shall hold good and that the same shall not be set

aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.”

28. Thus from the above decision of Hon’ble the Apex Court it is explicitly clear that there is no automatic absorption of the concerned workmen in the establishment, if the contractor has employed labours in violation of provisions of the Act of 1970 and they cannot claim that they are direct employees of the company.

29. Exhibits. W-01 to W-09 clearly show that the workman S/Shri Pankaj Kar and Gopinath Ghosh were engaged by the contractor for the work of the Company. However, there is nothing in these exhibits to show that the salary had been paid to these workmen directly by the Company. There is nothing on record also to show that they were engaged by the Company directly. Consequently, they were workmen of the contractor and they have no relationship of employer and employee with the Company. Ext. W-09, copy of which has also been filed by the Company which has been marked as Ext. M-02 shows that Shri Sunil Kumar Pramanik was engaged by the Company directly, but the case of the Company is that he was engaged for the job of electrical repairs and the same was not of perennial nature. Payment was also made job-wise. In this context it would be proper to refer to Hon’ble the Apex Court’s decision in *General Manager, Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal & Ors.*, JT 2010 (13) SC 729 where Hon’ble the Apex Court after considering various pronouncements has held

“8. Two of the well settled recognized tests to find out whether the contract labours are the direct employees of the principal employer are (i) Whether the principal employer pays the salary instead of the Contractor and (ii) whether the principal employer controls and supervises the work of the employees.....”

30. Thus from the above decision of Hon’ble the Apex Court it is abundantly clear that payment of salary to the persons concerned and control and supervision of work by the employer are the two important factors to be taken into consideration while deciding the relationship of employer and employee.

31. Learned counsel for the union has cited several case laws in his submission to show that the contract in the instant case was a sham contract and in absence of the same, relationship of employer and employee is established. He has relied on *Steal Authority of India Ltd. v. Workmen of Steal Authority of India Ltd.*, 2017 Lab.I.C. 1467. In this case workman was initially engaged as contract worker by ex-contractor of the Company. He had been under direct control of the management of the Company and worked more than couple of decades in different departments connected with process of production of the Company. The facts of above cited case are different from that of instant case. There is nothing on record to show that the workmen were under direct control of the Company or they worked in different departments of the Company. There is nothing on record to show that the concerned workmen worked in the establishment of company.

Facts of *Bharat Heavy Electricals v. State of U.P.*, AIR 2003 SC 3024 cited by the learned counsel for the union are also different. Gardeners were engaged through contractor for looking after lawns and park inside factory premises, campus. Their work was supervised by the employees of the Company, attendance was also recorded by another employee of the Company. Thus, applying the control test, Hon’ble the Apex Court held them to be employees of the Company. This is not so in the instant case. The control part of the concerned workmen by company is missing.

Another case cited by the learned counsel is *West Bengal Power Development Corporation Ltd. & Ors. v. Asish Dey Chowdhury* decided by Hon’ble Calcutta High Court which has been set aside by Honble the Apex Court in Civil Appeal No. 2863 of 2006 vide order dated 21st April, 2010. Hence it requires no discussion.

In *Hussainbhai, Calicut v. Alath Factory Thozhilali Union*, Calicut & Ors, 1978-II-LLJ 397 Hon’ble the Apex Court has held “The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment.....” Facts of the present case are entirely different. In the instant case the workmen concerned were engaged for electrical maintenance, repairs etc and that too through a contractor having no perennial nature of job.

Other cases cited by the learned counsel for the union, *Shining Tailors v. Industrial Tribunal, U.P.*, 1983-II-LLJ 413 also spoke of supervision and control test. In *Silver Jubilee Tailoring House & Ors. v. Chief Inspector of Shops and Establishments & Ors.*, 1973-II-LLJ 495 the relationship of employer and employee was discussed with regard to definition of person employed under Section 2(14) of Andhra Pradesh Shops and Establishments Act, 1951 which is not applicable in the present case. In *KCP Employees’ Association, Madras v. Management of KCP Ltd., Madras & Ors.*, 1978-I-LLJ 322 Hon’ble Supreme Court has held that where any reasonable doubt on law and facts, the benefit must go to the weaker section, labour. No reasonable doubt can be said to have arise in the instant case.

32. Now again coming to the principles propounded by Hon’ble the Apex Court in *Balwant Rai Saluja v. Air India* (supra) the relationship of employer and employee which is pure question of fact can be decided only after taking into consideration the facts as to who is appointing authority, who pays salary, exercises control and supervision over the workmen and who is authority to take disciplinary action against these persons. Applying these tests in the present case,

the National Insurance Company Ltd. was neither appointing authority, nor was having control and supervision over the persons concerned. Salary also not paid by the company. Moreover, the union has asserted the relationship of employer and employee, burden of proof lies on it to prove the same. But, I have no hesitation to say that the union/workmen concerned have miserably failed to adduce evidence in this regard. They have also failed to prove that the workmen concerned ever enjoyed any benefit available to other regular employees of the company. Thus, all the basic ingredients of employer and employee relationship are absent in the instant case.

33. In view of foregoing discussion, I come to the conclusion that the reference is bad in eye of law, as the union who has espoused the cause of the concerned workmen does not have *locus standi* and there is no relationship of employer and employee between company and the concerned workmen. Consequently prayer for absorption in service is also not sustainable in law and concerned workmen are not entitled for any relief.

Award is passed accordingly.

Dated, Kolkata,
The 26th July, 2018.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer